AN

ESSAY

ON

CRIMES AND PUNISHMENTS,

WITH A VIEW OF, AND COMMENTARY UPON

BECCARIA, ROUSSEAU, VOLTAIRE,
MONTESQUIEU, FIELDING,
AND BLACKSTONE.

IN WHICH ARE CONTAINED

TREATISES

Of the Idea of God and Religion, (as an incentive to Virtue)
— Scepticism and Faith (as conducive to Knowledge)
— Heresy and Toleration (as an Enemy to and a Promoter of Happiness)
— Religion in general (as a support to public Peace)
Of the Progress of it since the Reformation (as productive of Liberty)
— The Idea of Honour, Ambition, and Pride (as the Source of criminal Offences)
And of Morality (as the Source of all Good)

BY M. DAWES,

OF THE INNER TEMPLE, ESQ.

NATURAM EXPELLAS FURCA LICET, USQUE RECURRET. HOR.

QUOD VERA INSTITUTIO ILLIUS CURIÆ EVANUIT ET VELUT UMBRA EJUSDEM ADHUC REMANET. COKE.

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JUL 3 1908

TO THE

RIGHT HONORABLE

THE

EARL OF HUNTINGDON.

MY LORD,

AT a time, when all ranks of people ſacrifice themſelves to the projects of ambition, and the whole kingdom are ſtruggling to ſupport their vanity, pride, and voluptuouſneſs, againſt the frowns of fortune, and the accidents of war, it is an honor to the nation, that among its numerous nobility, there is one man whoſe integrity, virtue, politeneſs, and philoſophy, make him a deſirable character to patronize an humble literary attempt, in the great and general cauſe of humanity.

There are few men of faſhion, my lord, but who are more or leſs devoted, according to their rank and circumſtances, to ſenſuality and ſelfiſhneſs; in gratification whereof, they dignify vice in contempt of cen-

ſure, and render it faſhionable in derogation of the happineſs they viciouſly purſue.

Inſtead of protecting their inferiors by their bounty and good example; or regarding that mutual ſubjection, by which all degrees of men are ſecured againſt encroachment, the greater part of the Engliſh nobility, by the unlimited indulgence of their paſſions, become uſeleſs, if not injurious members of civil ſociety; contrary to the intent of their titles, which they tarniſh, and which are the ſuppoſed rewards of exalted merit.

The gaudy honors that decorate their names, and their unacquired affluence which gives them power, dazzle their underſtandings. They ſcatter around them the ſeeds of evil by the profligacy of their lives, and ſhine in rays of falſe and contaminating glory. They command obedience from the ſervile ſycophant, but are nevertheleſs inwardly condemned by thoſe who ſuppliantly obey them, as encouragers of iniquity, rather than promoters of knowledge and truth.

The purſuits of diſſipation, gaming, and debauchery, engroſs all that their time and attention, which if beſtowed in the ſupport of genius, a reſpect for their country and its conſtitution, a love of the great Creator and all his works, would ſignalize them, as the parents of virtue and wiſdom.

But

But, my lord, luxurious and voluptuous as the lives of ſuch men may be, and forgetful as they appear that none are ſo low, as not to be ſerviceable to the high, nor ſo high, as not to be ſerviceable to the low, it is equally a pleaſure, and an honor, that I have now an opportunity of finding an exception to the diſſolute character of a nobleman in your lordſhip, whoſe time is employed, not only philoſophically, but in acts of philanthropy, and private benevolence.

While the various ſports of gaming occupy the thought and ingenuity of one part of our peerage, and another are engaged in ſchemes of moral and political degeneracy, your lordſhip finds a calm retreat, in the fields of ſcience and information, which you enjoy, in moments, when the former are either tortured by the dreaded or experienced events of a capricious, and fallacious goddeſs, or are depreſſed with deſpair, by the failure of their hoſtile and ambitious deliberations.

Retired therefore as your lordſhip's ſituation is, and ſequeſtred as you are from the buſtle of the world, the grimace and affectation of courts, and the reſtleſs anxiety of politics, it is impoſſible for me to do better than prefix your lordſhip's name to a work on crimes and puniſhments.

I might heſitate in dedicating ſuch a work to your lordſhip, of which the ſtateſ-

man and lawyer may be thought more properly judges, were I not aſſured, that though you profeſs to be neither in practice, you are ſufficiently both in theory. This, in addition to your lordſhip's known characters of a philoſopher and legiſlator, qualify you to determine on the little merit of an eſſay, which I hope will not be altogether unworthy your lordſhip's countenance and protection.

In this hope, and that in your lordſhip's opinion, I ſhall be thought to have opened a door to legal reformation, in regard to the Engliſh criminal juriſprudence (however defective my arguments) I am ſatisfied I ſhall not be condemned for want of charity and compaſſion, which, as they are commonly ſaid to cover a multitude of ſins, may intitle me to favor, ſhould I fail in the purpoſe, that has hitherto excited them.

Permit me therefore, to lay theſe pages before you lordſhip, for a moſt ſerious peruſal, and to declare myſelf reſpectfully and truly,

Your lorſhip's moſt humble,

and obedient ſervant,

M. DAWES.

PREFACE.

OF all the ſubjects that have ever been written upon, there is not one of them of more importance to the welfare of man, as an individual, or to ſociety, as a body, than that of crimes and puniſhments. Many celebrated writers have choſen it as a theme, on which to exerciſe their genius and penetration; among whom, ſome have deſervedly obtained the reward due to their lenity, and others have been reprobated for their rigor. When we look around among the various nations of the earth, and obſerve the general principle whereon their reſpective people are governed, we find a difficulty in diſcriminating the government, which, well adminiſtred, is beſt calculated to anſwer the end of civil ſociety in the good of the whole, and of its component parts in its reſpective members. Undoubtedly neither the happineſs or proſperity of man, nor the glory of a nation, are ſo eminently admired, as in a country which, like England, can truly boaſt of freedom. It is here only where a man may be ſaid to be ſelf-governed, and ſelf defended. The con-

joint character of citizen and ſoldier are centred in him, and while he rules himſelf, and contributes to the rule of his fellows, he protects himſelf and them. Yet with all the perfection of government, which political and moral theory will admit of, in regard to Engliſhmen, ſuch is the fallibility of ſublunary beings, and human invention, that this perfection falls conſiderably ſhort in practice. We perpetually boaſt of liberty, but nevertheleſs owe to corruption, which is encouraged by ourſelves, all its deficiencies. This affords ground of complaint, that however nominally free we are, to glorious and good purpoſes in the eyes of ſtrangers, we want in a degree the reality of freedom, which nothing can produce but univerſal virtue. Our corruption is often attributed, not ſo much to an error in the conſtitution of our government, as to the ambitious, and political views of thoſe men, whoſe duty it is to adminiſter it with honeſty and fidelity. We are indebted to bad education, bad laws, and the mal-adminiſtration of government, even for thoſe moral inconveniencies, which from time to time have induced the legiſlature to deviſe means of prevention. If inſtead of endeavouring to kirb mankind, it were poſſible to lead them, we ſhould ſee their happineſs increaſe, in proportion, as the principles of their leaders were virtuous and hon-

honorable. But ſo long as laws increaſe, for the puniſhment of moral evil, ſo long will that evil increaſe, and ultimately bid defiance to death itſelf; a puniſhment that does but check its career, in order to concentrate its miſchief in the human heart, the better to deliberate on its purpoſes, and effect them at the expence of happineſs, which falſely purſued, immerſes the offender in miſery and wretchedneſs!

If mankind had continued in that perfection, in which they are ſuppoſed to have lived under their primitive ſtate of natural ſociety, there certainly would never have been a neceſſity for their forming an artificial one; but as the experience of the world has ſhewn, that the common wealth of a Plato, the utopia of a More, or a ſpiritual kingdom, are not calculated for the reſtleſſneſs and turbulence of the human being, who is governable only by a degree of force, and ſecured againſt them by human laws, the very neceſſity of becoming a citizen implies, that if he merited the name of unjuſt in his civil, he merited the ſame in his natural ſociety; why elſe did he lock and bar his doors the inſtant he became a citizen, but becauſe he endeavoured in *private*, to render his civil laws *publicly* unneceſſary to be exerted? If he merited this name in civil, he certainly merited it in natural ſociety, conſe-

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quently he would then be naturally bad; but as this is impoſſible, and as injuſtice, only another name for inconvenience and inequality, is artificial, it follows, that the injurious, and unequal effects of it, were productive of civil ſociety, in which the laws of man prevail over the rude laws of nature, and place him on an equality with his fellows. The oppreſſion of men, over men in natural, brought them in civil ſociety, to conſtitute the particulars of it into crimes, (over and above thoſe actions, which are marked out as ſuch by God himſelf) to prevent which, puniſhments were deviſed in the name of all, which before could only be inflicted, according to the wrath of private individuals.

Thus may we conclude, that crimes and puniſhments originated, and that as the former were inſeperable from the intercourſe of men, the latter have ever been neceſſary in different nations, according to the temper, genius, and civil inſtitution, of their reſpective people.

That ſyſtem therefore, of criminal legiſlation, muſt be the beſt which is adopted by the beſt of governments of the beſt of people; among whom the neceſſity of puniſhment is proportioned to the ſcarcity of crimes, and the opportunities, either from temptation or otherwiſe, to commit them; hence it is, that according to the fre-

frequency of puniſhment in any community, is the degree of its corruption, and the error of its government.

It is in the nature of man to ſeek civil ſociety, for the welfare of himſelf, and the ſocial body; and however perfect he is in nature, or before the formation of ſuch ſociety, it is allowed, that his happineſs depends ſolely on education, in reſpect to himſelf, legiſlation, in reſpect to his temporal advantage, and government, in reſpect to his ſecurity, and enjoyment of all that is dear to him, his life, his liberty, and property. Education, legiſlation, and government, followed as unavoidable conſequences, and the effects of the inſtitution of civil ſociety for its general good, wherein the conflict of man's paſſions, his intereſts, and the devellopement of his talents, led him in conjunction with his fellows, to eſtabliſh laws as the conditions of his protection in it. The annals of the world teſtify the ſhort ſightedneſs of human beings, in framing of laws, and conſtituting of governments for the beſt; and perhaps all the miſery and misfortunes of different nations, may have contributed to the little perfection hitherto found on earth.

If at the origin of civil ſociety, a man had been encouraged in that virtue, which nature had endowed him with, and it had been

been poſſible that no falſe intereſt could have drawn him from the improvement and practice of it, no other law would have been neceſſary but of nature; his education would have been perfect, and his government eaſy and glorious. But as if the machinations of man were ever to be defeated, we behold him at beſt, a ſufferer in civil ſociety, and more prepoſterous than he poſſibly could be in his primitive condition, ſtanding too in need of a bridle, to reſtrain him from courſes, which would make him ſtill more ſo without. He therein conſents to laws as a private and public benefit, and as readily, but artfully, endeavours to break and elude them. What can this reſult from, but education and government? which if good, it is reaſonable to imagine his actions would be the ſame, and if bad, that his conduct would expoſe him to the puniſhment of his Maker in conſcience, (the voice of God) and of man, for the ſake of man, who may as well be habituated in virtue, as become depraved and inveterate in practices, which its precepts can never extirpate.

Were puniſhments moderate and certain, in every caſe of criminal delinquency, government would not relax the execution of the laws, when founded in wiſdom, but rigorouſly enforce them; for government is a mean between the extremes of natural liberty

liberty, and civil licentiouſneſs; it gives life and vigor to thoſe laws, which the ſocial body conſents to; but it is a misfortune, that mankind conſent to them, on the increaſe of moral inconvenience, unknowing that it prevents their obedience to them.

LIBERTY may be unfettered, while men are unencouraged to think thoſe things right in theory, which may be condemned in practice, and no advantage can poſſibly ariſe to ſociety, by the indulgence of any errors, while the actions of men are limited. Monteſquieu ſays, that liberty conſiſts in a man's doing what he ought to will, and not in being conſtrained to do, what he ought not to will; meaning that he ſhould not indulge in thought or opinion an inclination to commit, what the laws have reſtrained, however bad they may appear, or juſt the actions they may limit.

Toleration ſhould be as extenſive as it is poſſible for the welfare of ſtates and mankind to admit. Actions ſhould be leſs reſtrained by ſevere penalties, and human liberty more corrected. The quantity of puniſhments encreaſes the buſineſs of the magiſtrate, and the prohibited wrong inſtead of decreaſing, accumulates, to the annoyance of the ſtate, which while it ſeeks by violence its own advantage, may ever defeat its own purpoſes.

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NATURAL liberty conſiſting in a power of acting as every one thinks fit without legal puniſhment, it follows that where this total abſence of reſtraint and controul is wanting, civil liberty conſiſts in acting as every one thinks fit according to the laws, an obedience to which, is more deſirable, becauſe more profitable, than that wild liberty, which is in part diſpoſed of, or molified, and meliorated, on the formation of civil ſociety; yet ſuch civil liberty is as extenſive, as if there were the ſame total abſence of reſtraint, in the actions of men, as when altogether under the influence of natural liberty; ſo that while in civil ſociety they conſent to their limitation, they enjoy their natural liberty in the ſame extent as if they were only in a ſtate of uncivilized nature, and may commit even thoſe actions, which they have conſented to call criminal, on condition of ſuffering the puniſhment they themſelves have annexed to them, which frequently happens, and thence proves, that from the weakneſs of man, his natural liberty is neceſſarily reſtrained for his own advantage, while on the contrary, thoſe actions he has conſtituted criminal would lead him into evils, which he wiſhes to avoid.

And from this we may infer, that as miſery and deſperation, riot and confuſion, to which man was ſubject under natural li-

liberty, drove him into civil ſociety to regulate his actions by the authority of law, his civil liberty is preferable, becauſe it protects him, not only in the enjoyment of his natural rights, but againſt external violence. Thus natural liberty by its barbariſm, and being productive of wretchedneſs and grief, is deſtitute of thoſe charms and bleſſings, we often hear aſcribed to it, and civil liberty, properly underſtood, is the only ſupport of the peace and proſperity of man, by ſoftening and tempering his natural ferocity, and making him equal with his fellows, by the neceſſary limitation of his actions, while he is left to the full enjoyment of his thought, and the avowal of all its objects.

In this manner are all civil rights founded on natural rights, which are original, univerſal, primary, and inherent. Civil rights are ſecondary, local, delegated, and factitious, for human convenience. Individuals, who are equally concerned in, and ſubject to the one are ſubject to the other. There is no ſuperior controul in either, but of God. Civil rights, therefore, and civil reſtraints, are calculated for the happineſs of every citizen, who enjoys all his natural rights to good and proſperous purpoſes, while to the ſame end, he acts in obedience to his own laws. The diminiſhing of his natural, only encreaſes his civil liberty, which not militating againſt, though improving upon it, he enjoys

joys in preference, and is then truly free; but whenever he yields to civil corruption, and ceaſes to exerciſe thoſe rights, on which his liberty and government are founded, he ſubjects himſelf to the hand of tyranny and deſpotiſm, to which all free ſtates incline when public virtue is converted into ſelfiſh regards.

Power will always encreaſe, and encroach on natural juſtice. Though delegated and dependant, it forgets its origin, and will more or leſs oppreſs thoſe who create it, unleſs they humble it by their united, and entire exertions. Inſtead of preſerving natural rights, it will dictate arbitrary and falſe ones, and invert cauſe and effect, by making all controul of its creators ſubſervient to itſelf.

The rights reſulting from natural liberty are primary, by which, under God, we exerciſe thoſe powers and faculties he has given us. The rights reſulting from civil liberty, are ſecondary, by which, under legiſlators and magiſtrates, we exerciſe all our natural powers impartially, and according to human laws and ordinances, which may be altered at our pleaſure. Under civil liberty we are governed according to our own common will and wiſdom, ſo long as we preſerve our virtue intire, and regard it equally in a public, as a private ſenſe, as well for the good of our fellow citizens,

citizens, as our own. But the inſtant we ſuffer theſe to give way to the deceit of private intereſt ſolely, we raiſe an influence in the governing part of the community, and make it ſuperior to, and independant of ourſelves. We are then ruled by others, and are not ſelf-governed; our equality is deſtroyed, and we are no longer free.

Civil and religious governments were eſtabliſhed by man, in order that the right of private judgment ſhould give way to a public deciſion, and preſerve that natural liberty, by equal laws, which before was abuſed. Kings and ſovereigns were appointed by the people, for the intereſt of the community, and the intereſt and ſecurity of every member in it, who has a right according to the principles of natural liberty, to remove them, whenever they act contrary to law, and break the truſt repoſed in them. To ſay that the people commiſſioned them to act according to their will, is an error. If, however, they were ever left to themſelves, and no previous conditions or inſtitutions exiſted, whereby they were to rule, they certainly received no power from the people to do miſchief, or to infringe thoſe laws, by which they were governed in a ſtate of natural liberty; but then acting immediately under God they would, if their communion with him were conſtant, act according to the per-

fection of human nature. But as private will was too feeble, and the paſſions and talents of individuals, encreaſed diſorder among them, kings and ſovereigns were the inſtruments, whereby their ſtipulations in regard to juſtice, and civil and religious government, were obſerved and executed. A community thus do that in groſs, which every member of it, under natural liberty, would individually do for his own preſervation.

The laws of nature, which are the laws of God, were never intended to be annulled by the laws of ſociety, unleſs it be proved that man ceaſed to be man, when he relinquiſhed his natural ſtate, and became altogether an artificial being, under civilization, kings, magiſttrates, and judicatories. However much men may be diſtinguiſhed, and rendered unequal in point of fortune, they never ceaſed to be human. Acting under the divine will in their natural ſtate, which directed them to their own good, and the preſervation and benefit of their whole ſpecies, it is manifeſt that nothing which defeats theſe purpoſes can be agreeable to the laws of nature, which in civil ſociety are preſerved and regulated according to natural reaſon, the foundation of civil and religious government, at the head whereof, kings and ſovereigns are placed by the people, not to reign according to their own ca-

capricious humor, however well intended, under God, but according to the laws of the kingdom which regulate the intentions of kings, ſovereigns, and ſubjects equally.

In the words of the late learned Gerard Noodt, profeſſor of civil law, in the univerſity of Leyden, "The ſupreme magiſtrate "with whatſoever title he may be inveſted, "was never ſent down from heaven to "earth, but appointed by the common "conſent of the citizens, and that if he "would act in a manner worthy of a prince, "or magiſtrate, he muſt acknowledge himſelf bound by the laws, and not ſuppoſe "himſelf raiſed above them; that he ought "to meaſure his power, not according to "his caprice, but the public utility, that "if he uſe it otherwiſe, he acts not as a "prince, or magiſtrate, but a tyrant, and "that his ſubjects may reſtrain him by "every right divine, and human."† Natural liberty led them to appoint him for the preſervation of civil liberty, but both are invaded and loſt, when either the ſupreme magiſtrate governs againſt natural and civil law, or the ſubjects ſubmit to folly and ſlavery in conſidering his appointment divine, and not human.

Natural or civil liberty then may be invaded, but not altered; we may become

† See his Diſcourſe on Sovereign Power, tranſlated by A. Macauley, and publiſhed by Dilly.

ſlaves, but are only free while we govern ourſelves according to law, and conduct ourſelves according to virtue and morality.

We may attribute the encreaſe of human offences to the introduction and improvement of trade and commerce, which have raiſed the grandeur and power of nations; but it affords no reaſon, that becauſe they have produced riches and luxury, improved arts and ſciences, embelliſhed our lives with every ornament, and furniſhed us with every comfort we are capable of taſting, that the natural and civil rights of man ſhould be abuſed, or that the griping hand of power, which is derived from them, ſhould be employed to their injury, and in contempt of advantages, which might otherwiſe follow the diſpenſations of a government truly wiſe and virtuous.

Crimes and puniſhments are the companions of each other; they have mutually encreaſed as the ſpirit of the times, or the ignorance and tyranny of ſtates and men, have conſtituted the one, and preſcribed the other. In this they ran retrograde in ſearch of what they *falſely* imagined virtue, and encreaſed the vice they firſt created, and afterwards endeavoured to correct. As it encreaſed under their folly, their oppreſſion encreaſed its puniſhments. Had they ſtudied philoſophy and freely ſought out virtue and truth, the office of their magiſtrates would have

have relaxed, and ſevere puniſhments have been unthought of. What could have occaſioned the execution of ſeventy two thouſand malefactors, making two thouſand a year, in the reign of Henry VIII. or of three or four hundred a year in the reign of his daughter Elizabeth *, but the wickedneſs and deſpotiſm of their government, and the puniſhments of the *innocent*, for the *virtue* of hereſy, which was ſhamefully conſtituted criminal. Trade, manufacture, and commerce were then almoſt unknown, and could not therefore promote moral offences, as they are ſince ſuppoſed to have done. We may hence aſcribe the immenſity of crimes in theſe reigns, to ignorance, vengeance, pious fraud, bigotry and tyranny, which have decreaſed under philoſophy, knowledge, and liberty, and comparatively left the executioner little to do. But to complete their triumph, ſomething ſtill is wanting, which nothing but the extinction of death as a puniſhment for human offences, will produce.

Trade and commerce may have encreaſed crimes and puniſhments, and by raiſing the power of all orders of people, have inflamed their paſſions, purſuits, and ambition; inſomuch, that the civil government have a greater difficulty in ruling them.

* See note, page 27.

Death has been preſcribed as a puniſhment for offences of human inſtitution, in proportion as trade and commerce have encreaſed, whereby greater regard has been paid to the things of the world, than to the life of man, which is forced from him by a power merely human and tyrannical, with a falſe view of preſerving thoſe things, and by its ſuppoſed terror to prevent his life from ever being taken from him. It is this error that has occaſioned the following eſſay, which is intended to prove, that no crime of human inſtitution ſhould be puniſhed with death. A flouriſhing commerce may be productive of conſequences, which are neceſſarily conſtituted crimes; and they may be puniſhed with ſuperior advantage, without taking away the life of the criminal. Vice ariſes from particular habits, and to reſtrain and palliate it, is the buſineſs of art, which is only juſtly exerciſed, while it meaſures its remedy by the meaſure of the vice its ſtrives to controul.

In anſwer, therefore, to any thing that may be urged againſt theſe arguments, or any other in theſe ſheets, which the reader is at full liberty to differ from, the author of them hopes he may be allowed to obſerve, that unleſs it come with ſuperior force to the reflections that led him to them, he ſhall be neither ſurprized, nor concerned at it. It is every man's right to think and judge

judge for himſelf, and a difference of opinion, is as natural to us, as a difference of taſte; and perhaps more ſo, for ſince the ſenſual faculties are ever paſſing different judgments, well may the intellectual do the ſame. Experience, education, example, and cuſtom, bias the human mind, and leave it contradictory accordingly as truth is more or leſs comprehended by it. It is theſe oppoſed to the principles implanted in our nature, which make it impoſſible for us to unite in any queſtion of difficulty or importance.

As the life of man, at beſt but ſhort, cannot be employed more laudably than in the ſearch of knowledge, which deſpiſes power, he only will be free from reproach, who purſues it, and endeavours to the beſt of his ability, to trace it to its ſource without fear of the conſequences; and who leaves others to give up the philoſophic freedom of a ſtudious, to the ſervile reſtraints of an ambitious life. Ignorance, hypocriſy, and fraud, lead men to ſeek external honors and rewards. Let theſe enjoy their courted meed!

Truth is dreadful to ſome men, becauſe ſhe expoſes their folly, and ſubverts their purpoſes, fraudulently deſigned againſt the many, to anſwer the purpoſes of a few. Hence, when any one ſpeaks with a philoſophic freedom, or adventures his thoughts

in print, which tend to detect impoſition, and extirpate pride and vanity; to relieve the mind from deceit, and the preſumption of pretenders, he becomes an object for bigots, zealots, and wicked and abuſive men to glut their vengeance, and laviſh their ſpleen upon. Truth, however, having no other end, than to promote univerſal good, and as Dr. Middleton ſays, to bring us, by God's permiſſion, nearer the perfection of our being, it is not in the power of man, however jealous, envious, ignorant, or malevolent, to affect thoſe who diſpaſſionately, and ſubmiſſively explore it. If it were, wiſdom, humility and virtue, would be in the power of ignorance and vice; and miſery, arrogance and falſehood, take place of the little happineſs, known throughout the world.

In regard to this eſſay, if any thing be found in it, that is confutable, which the author of it is ſenſible there may, a different method muſt be taken to convince him of it, from what is often done by ſnarlers and cavillers. Inſtances muſt be referred to, in proof and ſupport of whatever may be brought againſt him. General ſtrictures will recur unnoticed, but real criticiſm will command obedience, and when obtained open a door to knowledge, in which he will humbly, and at all times enter.

His deſign in theſe ſheets is to rouze the civil power, and the attention of the legiſlature;

giſlature;---to make the one truly ſenſible of its duty, and appriſe the other, that it will conſequently diffuſe honor and profit throughout the nation, by blotting from the criminal code, the puniſhment of death for offences of human inſtitution; and further to oppoſe thoſe wild notions of liberty, that are inconſiſtent with all government;---to diſtinguiſh between virtue and vice morally conſtituted;---to diſcover how far man is puniſhable by the hand of man;---to point out the cauſe inevitably producing thoſe effects, which ſtates endeavour to prevent; and---to explain the difference of reſtraint and toleration, as more or leſs conducive to natural or civil good, or evil. This is a deſign, which alike oppoſes thoſe pernicious ſchemes of government, deſtructive of true liberty, and every attempt to enlarge it, to the end of licentiouſneſs, anarchy and confuſion, to which, as it too ſtrongly inclines, we may aſcribe the haſtening of our empire, like ancient Rome, to its primitive barbariſm. England, though originally the ſport and contempt of the polite Romans, when maſters of the world, has long been the ſeat of liberty and proſperity, while Rome is ſunk in ignorance, poverty, and indolence, the effects of moral and political tyranny, ſuperſtition, religious impoſition, and every degeneracy. Yet this

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our country, running, as Dr. Middleton ſays *, perhaps the ſame courſe which Rome had run before it, from virtuous induſtry to wealth, from wealth to luxury, vanity, voluptuouſneſs and effeminacy, thence to an impatience of diſcipline, and a corruption of morals, till by a total loſs of virtue, grown ripe for deſtruction, may fall a prey at laſt to ſome hardy oppreſſor, and with the loſs of liberty, loſing every thing elſe that is valuable, ſink gradually again into its original barbariſm.

States like men contain the ſeeds of their own diſſolution. The beſt of governments, and the glory of mankind, arts, ſciences, and philoſophy, have in all ages of the world, had their riſe and fall, their birth, improvement, proſperity, decline and death; Lacedemon, Carthage, and Rome, were devoured by corruption, and they ſunk under their loads of infamy, vice, and ignorance.

England, though famed for learning, philoſophy, valour, wealth, and humanity, is in a like courſe of decay. Political and moral diſcretion may ſtop its ſpeed, and prolong its exiſtence; but if we regard poſterity and ourſelves, much muſt be done, to retrench our luxury, pride, ambition, and love of power, before its foundation will be more ſtable as an empire, than what the folly and wickedneſs of the times moſt diſmally portend. The ſtern and ſtrong

* Life of Cicero.

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ſinnews of our conſtitution relax apace. The decline of virtue, the progreſs of corruption, and the loſs of all ſenſe of ſhame, go faſt to complete the ruin of our empire. Monarchy, ſuppoſed by theoriſts to exiſt without tyranny, tends to grow abſolute. Ariſtocracy, ſuppoſed alſo to prevail without ſeverity, to forget its office; and Democracy ſuppoſed to be maintained without confuſion, to ſacrifice its deareſt intereſt to the purpoſes of voluptuouſneſs. The whole kingdom are diſpoſed to forget, that neither ſtates nor men can preſerve a healthy and vigorous exiſtence, when all the means to thoſe wiſhed for ends, are neglected and deſpiſed, and every man employed in completing his ſlow, but certain deſtruction.

In the maze, however, of this dreary proſpect, it is an exhilerating reflection, that when the glory of the Britiſh empire ſhall be ſunk, and the radient ſun of its conſtitution and grandeur ſhall be ſet, as in time it will, Britons will find a refuge in a tranſmarine country, where freedom, arts, and ſciences will flouriſh and improve in additional perfection. North America will then be the ſeat of empire, where, to the joy of every lover of true liberty, our names, our language, and genius will ſurvive us. Lacedemon, Carthage and Rome live only in the annals of fame, and the pages of hiſtorians; but Britain like a phoenix will revive in America, and her

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aſhes in an old empire, will mature in a new one, where philoſophers, natural and moral, ſciences and arts, will mark the boundaries of truth, and by improving on the exalted and ſuperior ſimplicity of human nature, eſtabliſh on a leſs periſhable baſe, natural and civil liberty, virtue and human glory, than any on which they have ever heretofore been raiſed.

With this deſign,---and to open the mind of the reader---to excite him to place a becoming confidence in his own underſtanding, and leſs in the perfection of any author, however great his name; --to aſſiſt him in oppoſing his own judgment againſt the ſnares of authority;---to teach him to feaſt on want of information, rather than glut himſelf with error; and laſtly to clear the way of truth from thoſe weeds, ſown by the beſt and greateſt of men, the author has ſtriven to make his reader a better judge than himſelf of the preſent ſubject, and to enable him to comprehend it, with greater certainty.

Whatever may be his ſucceſs, as he has beſtowed his utmoſt ſincerity upon it, he has nothing to fear from the conſequences: But if finding the force of his arguments invalidated, he will chearfully recant them. In default however of this, he will continue to think them, not unworthy the conſideration of the true philoſopher, to whoſe candid criticiſm they are now ſubmitted.

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ERRATA.

P. 6, l. 26, for misery *and* read *or*. P. 25, note, l. 22, after *internal*, read *and*. P. 42, l. 18, for *laws*, read *law*. P. 56, l. 10, for *is*, read *are* P. 44, l. 9, for *warrants*, read *warrant*. P. 92, l. 14, for *raises*, read *raise*. P. 104, l. 10, for *laws*, r. *law*. P. 152, l. 23, for *con*, read *non*. P. 162, l. 10, for *infancy*, r. *infamy*. P. 218, l. 17, for *Romas*, read Romans: P. 238, l. 23, for *naure*, read *nature*. P. 250, l. 23, for *is*, read *are*.

INTRODUCTION.

THAT vanity and preſumption may appear to have as little concern in the compoſition of the following eſſay as poſſible, the author of it is anxious to obſerve, that although Crimes and Puniſhments have been known in all ages, and parts of the world among civilized men, yet, if no writer before him has attempted to prove that the latter do not prevent the former, when *ſevere and momentary* †, he hopes and truſts that he will be thought to have formed no intimacy with characters he has always ſtudied to avoid,

† Experience evinces, that extraordinary ſeverity has never produced any laſting effects. It has indeed been found to check the evil for a time, but then, as Monteſquieu obſerves, it has returned with the ſame violence as before. To render the intended effects permanent, the laws ſhould be adapted to the *genius of the people*, and the nature of the conſtitution, and it would be a taſk well worthy the wiſdom of the legiſlature ſo to model them, that they may better anſwer the *true ends* of government, which are to *prevent* rather than to *puniſh crimes* ‡.

‡ Perhaps it may be ſhewn, that the preſent unequal ſyſtem of our criminal laws *is not* calculated even to anſwer the end of *deterring* offenders.

See Ruffhead's Pref. to Statutes.

avoid, as inveterate enemies to ſcience and information.

Aware that from the time of the patriarchs down to the preſent throughout the world, puniſhments have been enforced even by death for various crimes, he laments that criminals have nevertheleſs conſtantly exiſted among men, and that laws ordained to extirpate crimes have been executed contrary to their ſpirit, in preventing and repreſſing them, whether founded in force, or fraud, or ignorance.

The principles of crimes and puniſhments have no connection with philoſophical ſubtleties in the opinion of lawyers;—they reaſon from the letter, and often argue to confound and perplex; they talk of the neceſſity of puniſhment, while they know little of the cauſe of thoſe actions for which they would have it inflicted. Their buſineſs is to eſtabliſh the wrong defined, and call for puniſhment as a legal conſequence. Ignorant or careleſs of the operations of the human mind, they ſport with it as if it were controulable by force; and they juſtify puniſhments as if crimes were committed on purpoſe to provoke them; they contend for them, but ſeem little acquainted with human infirmity, or thoſe laws by which the material and intellectual world are governed; and ſuppoſing men perfect, but wantonly incurring a criminal penalty, they argue that it ſhould be enforced as a reſentment rather than a terror: thus they acquit themſelves of the *jus dicere*, and expound the law they profeſs as a ſcience, but do not conſider the reaſon or conſequence of carrying it into execution.—This being the buſineſs of thoſe who, *jus dare*, made it, they implicitly conclude it is right; and as they become good lawyers, they

they progreſſively become bad legiſlators. The law is written, and the mere word of it is their whole regard; except in the partial conſtruction of it to favour partial purpoſes, which promoting great diſingenuity, and all that jargon of reaſoning heard in courts of juſtice, has conſtituted the law embarraſſing.

The following pages therefore are more immediately offered to the peruſal of philoſophers and legiſlators, who ſitting in the cauſe of mankind, ſtudy as a duty to increaſe their happineſs, and leſſen their calamities. It is by a conſtant watch and reſpect to the whole ſtate, in all its parts, that it is well protected, while otherwiſe it will ever be ſubject to thoſe offences which, neglected, prepare food for the laws, ordained to prevent, but which, in reality, puniſh crimes.

Criminals do not offend ſo much from choice, as from miſery and want of ſentiment; they would not commit crimes if ſnatched by the ſtate from foreboding evil to the practice of ſome good either to themſelves or others. Men of ſenſe will compaſſionate all human and ſocial offenders, lament their offences, and ſigh over the unhappy cauſe of them;—they will look upon the wretched priſoner, perhaps half naked and ſtarved, amputated or maimed, ill educated or deſtitute of taſte, and grieve over his condition; regretting ſome hidden defect in the criminal conſtitution or civil government, and reluctantly give him up to a puniſhment, which vagrant liberty had prepared him for, againſt the inmoſt deſire of his heart *; they will not be contented that

* No government can reform itſelf.---It is only an effect of ſome moral cauſe from whence effectual reformation can

that he has offended, but they will examine why; and tracing the cauſe, be diſpoſed to forgive an effect, which it was impoſſible to avoid †; and thus feeling the force and power of the mind, they will ſparingly puniſh the man for what the mind only was deficient in producing.

It is the intereſt of all ſtates to incline men to virtue, and doing this, the neceſſity of puniſhment will vaniſh; if the firſt be practicable, the laſt is diſgracing.—Encourage virtue, and deter vice; the intellect is the field of both; it is the faculty of the ſoul or mind, which receives all its ideas by ſenſation and reflection; perception *paſſively* and volition *actively*;—it is not to be influenced by human force; nature is its only director.—*That* freedom of the operations of the mind, which a man can neither reſtrain himſelf in, nor be reſtrained in by another, unleſs by ſome violence done to thoſe organs which produce thought, is real liberty; but to render actions *ſocially and morally juſt*, this liberty may be influenced and aſſiſted by *reaſon and experience*, which govern the happineſs of man, as the chief end of his life. Many actions have been conſtituted offences, which it was impoſſible not to commit; and what in one time was made criminal,

only ſpring. Thoſe who attribute the manners of a people to a particular government which they conſider as the cauſe, are miſtaken; government itſelf being only an effect. Thus a vicious or virtuous people produce either a good or a bad government, and not that they are ſo as government is good or bad, which inverts cauſe and effect. Let a people be inured to virtue and good, which nature encourages as productive of happineſs, and their goverment will be good of courſe.

† See *ut paſſim*.

minal, has at another been changed into a foible or human error.

To reſtrain moral actions which prove abſolutely adverſe to mens happineſs, application ſhould be made to their minds; the poſſibility of the cure ſhould be firſt conſidered, before a remedy be prepared, and no man ſhould be killed with a view to remove the diſeaſe. The truly ſkilful, ſenſible of the diſorder, adminiſter nothing when the effects of it have worn the patient out, and brought him to the door of death. If called in on the early dawnings of it, they ſearch it to its ſource; and finding it, they remove it as a cauſe, whoſe neceſſary effect is the patient's cure.

Deſtitute of perfection, it is vain and viſionary ever to expect it in the ways of men; teach them what is conſtituted right, employ them, let their habits and examples be always good, and it is poſſible they will practiſe it; but *prohibit wrong*, and *leave them entirely to themſelves*, and you will puniſh actions without preventing them. — Aſſociated bodies of men may refine their conduct, and approximate moral virtue mechanically; action and health tend to this, but action muſt alſo tend to ſome good, or the Devil will triumph where the Deity alone ſhould preſide. Action, however, from the ſecret ſprings of the human mind, may not always direct men to that good; wherever it fails, the defect is in nature, if any thing natural be defective; and it is the duty of ſubordinate man to diſpenſe with what can never be altered.—It is his duty alſo to make the moſt of life, to purſue happineſs his own way, and *that* ſtate will beſt aſſiſt him in the purſuit which takes the moſt care of him. By watching his

induſtry, and obedience to its laws, it will prevent him from violating them, and not leave him entirely to himſelf to offend, becauſe he has nought elſe to do, nor puniſh him for its own default.

Every thing out of the hands of the Author of Nature is good and right;—man only diſtorts and turns it from its purpoſe, and generates in the world fantaſtic miſeries more poignant than all the real ones he is naturally expoſed to.—It is impoſſible to reform the world; man is, as he ever has been, and will be; and he only is, ever has been, or will be the beſt and happieſt who is contented to ſee the world he lives in as it is, and is not miſerable becauſe it is not otherwiſe; who is ſenſible that he is made for the world, and not the world for him.

All laws that are calculated for a general good are right, but every law that is rigorous will defeat itſelf, and be looked upon as a vindictive inſtrument of puniſhment, to gratify the malignancy of ſome revengeful heart, which, inſtead of *preventing immoral actions*, glories in *puniſhing criminal agents*.

Good laws are a medium between contending efforts for ſuperior power and happineſs, preventing that miſery and weakneſs, which, though it aggrandizes one part of a community, creates but a falſe ſuperiority, and renders even greatneſs a burthen; they extend their influence univerſally, and by viſiting the meaneſt peaſant in his cottage or homeſtall, produce a general benefit. The mal-adminiſtration of good laws leaves us in a ſtate worſe than lawleſs; the magiſtrate who is entruſted with their execution, if he ſilently connive at all tendency to violate them by the ſubjects; if careleſs of his duty he ſuffer them

to

to wander vagrantly, or practiſe habits productive of that evil it is the ſtudy of the law to prevent, he will be an encourager of it, and by leaving them at liberty to tread the paths of vice, becauſe their actions, if vicious, will be puniſhable, he will erect a gibbet for their execution, inſtead of deſtroying one by preventing crimes.

The Rev. David Williams, in a letter to Sir George Savile, on the extent of intellectual liberty, ſays, p. 28, "I ſuppoſe it is known to "a certain magiſtrate, that there are numerous "ſeminaries in this town, where the principles "of robbery and murder are taught with great "care and pains. Who will ſay that opinions "in theſe inſtitutions on juſtice, &c. and the "expreſs declaration of them are not to be to-"lerated? The magiſtrate ſhould encourage "this declaration—the effects of which he might "be prepared for." But in oppoſition to this, if Mr. Williams had fully conſidered the ſpirit of the criminal laws, he would lament that a certain, or any magiſtrate ſhould know, that there are ſuch ſeminaries, and not endeavour to deſtroy them, rather than encourage opinions to be declared in favour of robbery or murder. The expreſs declaration of them not being tolerated, but only ſuffered, that is, unreſtrained by any legal prohibition, ſo long as preventive ſhall be preferable to puniſhing juſtice, the magiſtrate ſhould not only put every idle ſeminary to the rout, and thereby deſtroy the ſeeds of evil, but he ſhould conſtantly watch the abuſe of man's intellectual liberty, ſo that it may not lead him careleſly into evil actions.—When therefore Mr. Williams aſks, whether the expreſs declaration of

opinions in favour of robbery or murder is not to be tolerated, and in another part of his letter ſays that theſe opinions *are* tolerated, it is becauſe he did not diſtinguiſh between things abſolutely and ſpecifically *tolerated* by law, and things *unreſtrained* by law. Undoubtedly, no law reſtrains the expreſs declaration of an opinion that a man would do right in committing a robbery; but the law annexing a puniſhment to the act of robbing, no law tolerates the expreſs declaration of opinions in favour of it; and although no law reſtrains it, the good magiſtrate ſteps in, and far from encouraging, he ſtudies to deſtroy it, in order to make the penalty of the law unneceſſary. — Mr. Williams nevertheleſs had too much reaſon to ſuppoſe, that a certain magiſtrate knew of numerous ſeminaries in this town where the principles of murder and robbery are taught with great care and pains. Had that magiſtrate not known of ſuch ſeminaries, it would have been well; but the very knowing of them, and only waiting for occaſions to execute the law, without endeavouring to make it unneceſſary, is what every reaſonable man muſt regret. — Indeed ſuch a magiſtrate, and public offices for juſtices of the peace have been remarked as an evil. The late Sir W. Blackſtone, at a ſeſſions in the Old Bailey in 1774, expreſſed himſelf as follows: "I have conſidered rotation "offices as inimical to the end of public juſtice. "Before their inſtitution, the buſineſs of a ſeſſion "at the Old Bailey was generally done in a few "days, whereas it now ſeldom takes up leſs "than ſeven or eight.—This increaſe of crimes "and trials I impute to *the conduct of the juſ-* "*tices* and the practices of the thief-takers *em-*

"*ployed*

" *ployed uader them.* The juſtices have brought " the buſineſs of blood into a ſcience, and their " runners have reduced it into practice, to the " ſyſtematic regularity of an art. The juſtices, " like keen ſportſmen, have made it a rule, " when they caught a covey of thieves, to let " the old birds fly, for the purpoſe of pre- " ſerving ſport; and then admitted parties con- " cerned in the offences, as witneſſes for the " crown againſt their companions."

Vulgar minds can neither conceive, nor acknowledge thoſe palpable truths, which almoſt always eſcape them. They are accuſtomed to receive impreſſions without diſtinction; and being totally incapable of analizing objects, they are determined by the opinion of others, rather than by the reſult of their own examination. They offend thro' ignorance, but may do right by advice, inſtruction, and admonition. They ſin thro' idleneſs, which they do not approve, and employ themſelves under the baneful influence of the devil, inſtead of the benign auſpices of the Deity; but they may be made uſeful and happy, by the care of the magiſtrate, who, inſtead of leaving men to the effects of unlimited liberty, which they are unable to employ beneficially, ſhould lend a helping hand in teaching them to do good, and avoid evil; and thence ſave them from a puniſhment, which a liberty they know not how to employ, will otherwiſe ſubject them to.—As it is allowed on all ſides that it is better to *prevent* criminal actions than *puniſh* them, is it not incumbent on the magiſtrate to watch the conduct of the ſubject, and in character of *cenſor*, or *precurſor*, to reform him,

him, if his manners be ſuſpicious? and not to ſit ſupinely over his ſtatutes, waiting for opportunities to put them in force, and depending on their letter as a ſufficient ſecurity againſt the commiſſion of thoſe actions which they eventually puniſh?

It may be ſaid that the magiſtrate cannot always be on the watch to prevent evil, and therefore liberty muſt and will be uncontrouled to the end that crimes will be inevitably committed; but when it is conſidered that crimes in general are perpetrated not only by the careleſſneſs of the magiſtrate, but by the ignorance, inattention, and perhaps over-reaching credulity of thoſe who ſuffer by them, it will be found that this liberty on the one ſide, and folly and a thirſt of gain on the other, produce many of thoſe evils which are puniſhed after the injury ſuſtained.—We know that there are laws to execute a thief, a forger, and a murderer; but this would be but a weak protection againſt our being robbed or murdered, if we expoſed our lives or property to the temptation of either, by ſleeping with our doors unbolted. We too often blame thoſe who injure us, when the blame is more properly due to our own confidence; and in proportion to our diſappointment, and weakneſs, is the meaſure of our execration of thoſe who have found us an eaſy prey. It is therefore as reaſonable to conclude, that liberty ſhould be ſo far reſtrained as to prevent the mind from imbibing pernicious maxims, as it would be to puniſh crimes uſefully when committed after ſuch precaution. The criminal laws and the criminal court are the *cuſtos morum* of the country; hence, if the manners of its people can in no ſenſe be

ſaid

ſaid to be guarded againſt running into conſtituted evil, they are only puniſhed after the evil is committed, without any previous care by way of prevention. If the laws againſt idleneſs were executed, they might probably be productive of greater benefit, and leſſen the number of crimes, than the mere infliction of puniſhment after they are committed; for as the denunciation of puniſhment is principally intended to prevent them, it muſt be allowed that prevention without it, is preferable, by rendering every man ſerviceable to the community, of which he is a member according to law, and making him contribute, like the reſpective ſtones of an arch, to ſupport and keep the whole in ſtrength and order. Unreſtrained liberty, by being left to extend itſelf into the utmoſt extravagance of error, may lead the human mind to adopt pernicious maxims, and render the paſſions diſorderly, ſo as to corrupt the underſtanding, the ſource of all good, and cut off the poſſibility of a return to virtue. But let this liberty be watched, and controuled againſt the errors which tend to encourage evil actions, and prevention may leſſen their amount.

If a due attention were paid to the manners of the ſubject, and if badly inclined they were reformed, this, in co-operation with the laws, would contribute largely to prevent their execution. It is ſaid that the laws are a ſyſtem to reform manners, becauſe they hold out puniſhments for crimes, and that any interference between them and the actions of men, would infringe their natural liberty: but this is not true, although it muſt be admitted that naturally man's liberty ſhould be and is unlimited.

mited. The laws are not a ſyſtem of reformation of manners; they are certainly made to prevent crimes, but failing therein, and puniſhing them, how do they reform? If by puniſhment, they reform by a method, which ought not if poſſible to be practiſed; the proper mode of reforming ſhould, entirely *forerun puniſhment*, and by making men good, leave no occaſion to puniſh the bad.—But this is ſaid to be impoſſible! *man will be bad in ſpite of every human contrivance to make him otherwiſe.* This is a great conceſſion! and therefore you will puniſh him, becauſe it is impoſſible to make him better. Is not this flying in the face of his Maker, and ſaying, that becauſe he is not what he cannot be, he ſhall be deſtroyed? No argument after this more powerfully proves, that to put him to death, unleſs where he has wilfully robbed another of life, * is downright murder, however ſtates may think themſelves indemnified by the collected conſent of their reſpective people. The laws therefore are neither a ſyſtem for reforming of manners, if the magiſtrate only wait for their violation; nor would natural liberty be at all infringed, if, inſtead of relying altogether on the laws, he were conſtantly to promulgate their penalties to the ſuſpicious ſubject; and if abuſing his natural liberty by habits productive in their very nature of evil, to compel him to employment, wherein he would enjoy his freedom without fetters, or the danger of puniſhment.

If a certain part of mankind muſt be, or hitherto have been, ſacrificed for the benefit of all,

* See after.

all, or that a *few* have been, or ſhould be periodically cut off, for the ſake of the happineſs of *many*, how neceſſary is it that every effort ſhould be exerted to prevent whatever action may interrupt our welfare and happineſs! and can any effort to this end, except that of putting a man in chains, infringe his unlimited and natural liberty? It is certainly the extent of that liberty that he ſhall think of, avow, and commit, whatever action he pleaſe; but it is his miſery and misfortune, not his happineſs, that being *left too much in it*, and unaided in preparing his mind againſt the practice of conſtituted evil, he conſequently falls into puniſhment, which otherwiſe he might have eſcaped *. The rules of nature may be perfect; and *naturally* ſpeaking, a man left to the uninterrupted enjoyment of ſuch liberty, may never commit a *natural wrong*. But he being a *ſocial being*, and ſociety having marked particular injurious actions as criminal, he may commit a *ſocial wrong*; and therefore the uninterrupted enjoyment of his *natural*

* After Eve had eaten the forbidden fruit, and was reproached of it by Adam, ſhe is made to ſay to him by Milton.

——— Why didſt not thou the head
Command me abſolutely not to go?

To which the reply is admirable, and not inapplicable here.

——— I rue that error now
Which is become my crime, and thou th' accuſer.
——— Thus it ſhall befall
Him, who to worth in woman overtruſting,
Lets her will rule. Reſtraint ſhe will not brook;
And *left to herſelf, if evil thence enſue*,
She firſt his weak indulgence will accuſe.

MILTON, B. 9, v. 1180.

natural liberty would make him liable to commit it, when, probably, the compelling him not to abuſe it by warning, care, attention, and employment, would confine him from gliding involuntarily into crimes, and of courſe with-hold him from puniſhment.

To this end, and that nothing ſanguine ſhould diſgrace the criminal code of a free country, a queſtion is here attempted to be diſcuſſed on philoſophical, moral, and political grounds; opening, in an enquiry into the cauſe of all things, whether good or bad, and afterwards drawing from their effects concluſions that leave it beyond a doubt a certainty, that whatever *happens is right*, becauſe *it cannot be otherwiſe*; and that whatever *is to happen*, cannot be otherwiſe than *contingently it will be*. If good, it is and will be the effect of a good cauſe. If bad, the reverſe; which being alike conſtituted in the conventions of men, depend in a degree on the *good or bad* adminiſtration of thoſe ordinances to which they conſent for a general benefit. But if failing in the acquiſition, the cenſure is not due to themſelves. Their fallibility is their defence againſt it, and Nature pleading their univerſal cauſe, acquits them throughout the habitable world of thoſe charges and judgments, which the paſſions of ſome, and the intereſts of others wiſely think ſhould be pronounced, and ſays they are fooliſhly and rebelliouſly made. Left to the ſlavery of perverted ſenſe, educated in vice, falſely governed, and puniſhed for what the ſupineneſs and errors of the ſtate have occaſioned, it ſeems as if kings and rulers had an intereſt in their ignorance and miſery.

However,

However, not to appear poſitive or certain, on a ſubject which may ever ſet certainty at defiance, the author has exerted himſelf with ſincerity and compaſſion upon it. He has endeavoured to aſcertain the root of conſtituted evil; and ſuppoſing man to be in a great meaſure, every thing he makes himſelf, or is made by others, he has deduced his arguments in *cauſe and effect*.

Secure in his intention to ſtrike out ſome good, by commenting on ſeveral ingenious and celebrated authors, who have gone before him on the ſubject of crimes and puniſhments, and perhaps purſuing it in his enquiries farther than any of them, whatever may be the conſequence, he will be perfectly content, if meeting the ſympathy of his readers, any of them ſhall ſay he has breathed an affecting ſigh throughout theſe ſheets, and ſtudied to aſſiſt in the cauſe of humanity.

BOOK I.

OF THE EDUCATION AND GOVERNMENT OF MAN.

CHAP. I.

MORAL philoſophers conſider man as an active and reaſonable creature, receiving from ſcience his proper food and nouriſhment; and formed for occupation and employment. As a ſocial being, he cannot exiſt but in ſociety, where morals are of courſe the foundation of his happineſs; and as they are perfect or imperfect, he will be more or leſs happy or miſerable. Moral virtue reſts on knowledge; and the laws of nature are as fixt and invariable in regard to it, as to thoſe of matter and motion. Without moral virtue, we might as well pretend to gather fruit on barren waſtes, as to acquire knowledge: it reſults from our nature and education; which neglected, our minds are ſubject to be perverted, while their habits are

forming, and we become as contradictory in our characters as the elements, practiſing evil while we profeſs good; and hunting after happineſs while the very chace of it but leaves us miſerable.

Thoſe philoſophers who have ſuppoſed that a ſtate of nature is a ſtate of virtue, and that the miſeries of men depend on their deviations from it, have perplexed themſelves with difficulty in proving it. They have endeavoured to ſhew that a ſtate of nature is diſtinct from a ſtate of ſociety, and thence miſtaken an ideal for a real one. According to their doctrine, a ſtate of nature is nothing; it dies away in the inveſtigation, and is in fact unnatural; for as they maintain that children are left on deſerts where the habits of ſociety could not miſlead them, they ultimately make them monſters inſtead of men, leaving them nothing to form their minds upon but the earth and air; the water, trees and brutes!

Man being by nature ſocial, is born for ſociety; and ſociety in its original purity is a ſtate of nature: it cannot be otherwiſe; he is born in ſociety; his underſtanding, his paſſions, his mind, are formed by its connections, its prejudices, its doctrines, and events; and in the happineſs of ſociety he finds his own. An adult perſon, placed in a foreign land, whoſe people are happy in principles, which to him appear ſavage, finds a difficulty to approve them, and as ſuch is wretched; but a child, unprejudiced as he is, habituates himſelf to their ways and manners, and grows as happy as themſelves. As man is born for ſociety, ſociety is born for him; and all ſocieties being

uſeful

uſeful parts of the general ſociety of mankind, they and individuals only find their happineſs in the general happineſs of the world. This is univerſal virtue: the principles by which a family are happy, ſhould be applied to every family that compoſes the community as an individual: the principles by which a pariſh are happy, ſhould be applied to every family in it; and the principles by which a county or other diſtrict are happy, ſhould be applied to all its pariſhes: and thus virtuous families would form virtuous pariſhes; virtuous pariſhes, virtuous counties; and virtuous counties, virtuous communities; which would be happy on a principle of univerſal goodneſs, and contribute to, and form the welfare of kingdoms. This principle is found in the nature of man as a ſocial, not a ſolitary being. To be happy as an individual in a ſtate of natural, or as a citizen in a ſtate of civil ſociety, man muſt be virtuous; and to be virtuous, he muſt have a knowledge of the laws of nature, be always employed in the diſcovery of truth, and never, if poſſible, give way to the deceptions of falſhoods.

Education is the root from whence grow good and evil; and when civil ſociety wanders from the perfect and certain laws of nature, it will be more or leſs wretched, and every individual in it. It is the deviation from truth, that corrupts individuals; and to a neglect of it, is all our remaining little ſtock of knowledge and virtue owing. A neglect of truth introduces depravity, and encourages vice and infamy.

It is of the utmoſt importance to happineſs that the actions of mankind ſhould be morally right, and that their motives ſhould have no

other ſpring than nature, whoſe rules are perfect. This would deſtroy ſects of every denomination, and God would govern our happineſs without perverſion. Virtue is a conſtant and invariable ſource of pleaſure; it wants no rewards, nor has it any; it is the effect of divine wiſdom, not of chance; and rewards are the artificial inſtruments of fools and tyrants, which make nothing moral but what is ſelfiſh. True and genuine happineſs reſults from it, by the determination of the Deity; and not from rewards, which are the creature of a creature. If men would act according to the nature given them by the Deity, univerſal goodneſs would prevail; and if thoſe who are born with capacities were never to have them injured or perverted, they would anſwer the purpoſe of God; but when they are injuriouſly or perverſely employed, they grow vicious, and the vices of men are the effects of the errors upon which their minds are formed. All errors in education multiply as we proceed in it, until in the end they become incurable; and melancholy as this thought is with regard to thoſe in whom theſe errors are found, it is poſſible to prevent them in riſing generations, by affording the infant minds of individuals an early antidote.

Education having relation to the particular governments of particular countries, we are prepared for civil life by it, according to the principles of that government under which we live; and as that is good or bad, our education will be the one or the other, and we be more or leſs happy or miſerable. The laws of education vary in each kind of government. Honour is the object

ject in monarchies; virtue in republics; and fear under deſpotiſm. The ancients lived under republican governments, and they were magnanimous, virtuous, and brave. The moderns, who have lived under monarchies, are puſillanimous and feeble. The former made nature and reaſon their guide; the latter are educated in contradictory principles, under parents, maſters, and the world.

As a republic has for its ſole ſupport virtue, and as virtue is its only defence againſt corruption, the laws of it will be beſt obſerved; but leſſen the degree of this virtue, until a ſuſpenſion of thoſe laws ſucceeds, and it will be undone. Ambition and avarice will then ſupercede virtue, and poſſeſs the whole community. Virtue is alſo neceſſary to the good of an ariſtocracy; but in a leſs degree than in a republic; becauſe, tho' this is a government of a few over many, if virtue be not its principle, the ſame means may deſtroy it as a republic. In monarchies, vice more than virtue is the principle, and policy and tyranny effect their purpoſes almoſt without it. Laws here are its ſubſtitute, and they are impoſed with a rod of iron, independent of the people, who are compelled to obey them. Virtue here is a political non-entity, an artificial principle: vice is encouraged, or not prevented, and the people are vicious among themſelves, however liable they are to puniſhment for diſobeying the laws which rule them in chains. Private moral virtue is here of no uſe but as it may be directed to the public good, which is no other good than as it preſerves monarchy. Now monarchy evidently being an

enemy to knowledge, (however knowledge may flouriſh under it,) it is in a degree an enemy to virtue, and therefore in proportion as the people want virtue will be their want of knowledge and happineſs; notwithſtanding a monarchy may render itſelf glorious by means of honour, which looks up to titles and preferments, and which, joined with the force of the laws, may promote its ends as well, if not better, than if the people were altogether and equally virtuous and knowing. Hence education relating to the principles of government, that ſpecies which is neceſſary to form a good republican, may be uſeful under an ariſtocracy; but it will be unneceſſary in a monarchy, which, if abſolute, will deſpiſe it, and debaſe rather than elevate the minds of its ſubjects.

The government of England is a mixture of democracy, ariſtocracy, and monarchy. The democracy is checqued by the ariſtocracy, the ariſtocracy by the monarchy, and the monarchy by the conſtitution and laws; but though virtue may be the ſupport of the former ſeparately, it is in fact loſt when they are thus united; the democracy would of neceſſity have virtue for its protection, and frugality and equality render it indiſſoluble: but when knit with ariſtocracy and monarchy, it promotes ambition, avarice, and rapacity. Ariſtocracy, with its pageantry and extreme inequality * between the governors and governed;

* Monteſquieu very juſtly remarks, that the true ſpirit of equality is directly oppoſite to that of extreme equality, the former implying that we ſhould obey or command our equals, not that every body ſhould command and no body be commanded. This only reſpects government.---In regard to property

governed; and monarchy with its falſe rewards for the ends of a vicious glory, dazzle the eyes of the democracy, and tempt it with titles and honours. A monarchy, limited as in England by the ariſtocracy and democracy, is preſerved by the expectation of rewards, which virtue never wants, and thus is the democracy corrupted by the ariſtocracy to the ends of monarchy; ſo that the boaſted perfection of the Engliſh government, thus mixed and compounded, is in reality very wide of the perfection of either democracy or ariſtocracy ſeparately and alone, though it be pretended that their unity with monarchy forms a ſuperior government on earth; from whence we may infer, that in a limited monarchy, honour and fame, not virtue and truth, are the principles of it; that the education of the people is not what it ought to be to make them happy and good, and that therefore they are miſerable, and evil, in regard to the government, whoſe titles or preferments they have no hope for. Luxury and liberty, with a vicious education, lead them to deſpiſe the laws, and to encourage ambition and rapaciouſneſs, which lay the ground-work of all thoſe criminal actions for which they ſuffer, and which to prevent, ſuch a government accumulates puniſh-

property it is otherwiſe; for, as Mr. Hume ſays, as it is the intereſt of ſociety that mens poſſeſſions ſhould be ſeparated, equality is pernicious and impracticable.---Thus, equal as we all are by nature, we become unequal in ſociety, where our different degrees of art, care and induſtry, deſtroy all equality, which nothing reſtores but the laws, and which we are all equally ſubject to, however the particular government of particular ſocieties may be unequal in regard to titles, honours and preferments, which corrupt our virtue.

ments without effect. This conſtitutes rewards and puniſhments, the expedients of ignorance and vice; while knowledge and virtue would inevitably render both unneceſſary, as they are both improper, and deſtructive of the ends they are calculated to produce.

Were nature better attended to, we ſhould diſcover the duties of religion with thoſe of a man; but being plunged in error, and miſtaking effects for cauſes, and cauſes for effects, inſtead of removing our ignorance, we have increaſed our misfortunes. To the refinements of civilization we owe new inſtitutions and new laws, which are framed to prevent, what vice and folly have conſtituted criminal.

Education is the art of making us uſeful and happy; but to a neglect of it, and an indifference towards the Deity, with whom little or no communion is held, ariſe all the miſery which puniſhments have, and ever will produce to the diſhonour of a country pretending to freedom; for were education well underſtood, and proper people could poſſibly be employed in it, puniſhments would be unneceſſary: but while the human taſte is vitiated, recourſe muſt ever be had to expedients to prevent the injury that may proceed from it.

CHAP.

CHAP. II.

Of Crimes and Puniſhments in General.*

ALTHOUGH crimes are of human inſtitution, and certain actions prohibited, which from experience have been found to be publicly

* An enquiry into the end of rewards is purpoſely omitted in this eſſay, as being altogether unconnected with the ſubject of it; but ſhould the reader be anxious for information on ſuch rewards, the author refers him to Warburton's work of the Divine Legation of Moſes, vol. i. book ii. ſect. 5. where he will ſee that religion is made to ſupply the ſanction of *rewards*, which ſociety wants as abſolutely neceſſary to the ends of civil and monarchical government, and to protect external things, namely, goods, property, and body, by beſtowing additional reverence on the perſon of the magiſtrate to whom it is ſubordinate, and with whom it is in alliance for mutual benefits; and by holding out an *hereafter* as a ſanctuary of eternal bliſs to all who civilly and religiouſly demean themſelves *here*.

As the author however of this eſſay has carried his enquiry not beyond the preſent life, but confined himſelf wholly to crimes he takes for granted, that the conſcious ſatisfaction of a man's doing right, as conſtituted by civil ſociety, which ſtudies every good of every kind, is an ample reward *here*, without expecting any other *hereafter*, as a return for his doing what tends to his temporal happineſs of itſelf.

The independant purpoſe of religion is internal, uncontroulable in every individual, which as it raiſes and withdraws him from the world, has no concern with its affairs. —Hence it can have no other uſe but to influence men as citizens to do that for the ſake of *heaven*, which is enough for ſociety to be done for the ſake of its *general good*.

publicly and privately injurious to the happineſs and well-being of individuals, either in ſubordinate communities or aggregate bodies in political ſtates, it becomes a queſtion worthy a careful and patient diſcuſſion, whether or not the means deviſed as a prevention of ſuch crimes operate to the ends propoſed.

It is univerſally allowed, that if crimes are prevented, it is by the terror of puniſhments ordained by the laws of man, which controul not the human will, but in leaving it to chooſe the performance of good and the forbearance of evil; and that whenever thoſe terrors fail in preventing, puniſhment takes place on the undaunted criminal, who contemning the warning held out to him by the law, falls a ſacrifice to the imbecility of his will, in not avoiding the crime forbidden; but in committing it freely and deliberately by a previous determination.

The human mind, like a power in mechanics, is invariable in its operation, under invariable motives; the effect of the one is as *definite* as the effect of the other, every effect as regularly following its cauſe, as the cauſe precedes the effect; the exertion of the human will is ſo circumſcribed, by the motives or circumſtances under which it is made, that it cannot be otherwiſe than it is. The ſame judgment always produces the ſame volition; and judgment being a cauſe, of courſe like judgments in the intellectual ſyſtem, as well as like cauſes in the natural or mechanical, inevitably produce like volitions or effects †; if this be agreed, it will be ſeen that whatever

† See Hobbes, Hume, and Prieſtley on Neceſſity.

whatever effect the terror of puniſhment for conſtituted crimes may appear to have, it will vaniſh in contemplation, and be entirely loſt in the fact, that puniſhment, or the dread of it, does not produce the end propoſed.

When crimes are committed, the puniſhment appears horrible to the criminal; but the horror of puniſhment appears then too late; the crime is committed, and the criminal ſuffers; his liberty was unaffected and unreſtrained by the terror of what was intended as a prevention of the act committed, and he is puniſhed for what he could not help, and which could not poſſibly be otherwiſe: how therefore does the terror of puniſhment prevent the commiſſion of crimes? To a robber, or murderer, the crimes of theft and murder appear leſs heinous, when he is *about* committing them, than to his conſcience *afterwards*; yet the criminal laws meaſure his guilt, not in the degree he *foreſaw* it, but in the degree he *reflects* upon it, conſequently he is puniſhed for what he could not avoid, or rather ſuffers the puniſhment preſcribed by the laws, not for what he has done, becauſe it cannot be undone, and being done is right, but as a terror to prevent others from ſo doing. Thus puniſhment, following the crime, does not by death amend the criminal, or change his guilt.

Our enquiry then is, whether the puniſhment of crimes prevents their increaſe or multiplication, or whether its rigour does not make them more atrocious, and itſelf leſs efficacious ‡?

That

‡ It has been remarked that in the reign of Henry VIII. there were 72,000 thieves and rogues hanged, which make about

That puniſhments do not entirely prevent crimes, admits of no queſtion; for crimes are and ever have been committed in deſpite of them: but how far they reſtrain their quantity or quality, we are altogether ignorant of; we know that crimes *are* committed in contempt of puniſhment or the dread of it; but we know not whether they would increaſe, or decreaſe, were gibbets and priſons to be removed, and puniſhment deſtroyed; having no inſtance to refer to when puniſhments were unknown or unpractiſed, we cannot preciſely determine whether if they were ſet aſide men would be leſs deſerving of them, or their actions be leſs criminal; ſuppoſing however that from the inequality of mankind, the idleneſs of one part, and the ignorance of the other, that diſorder, rapine, and fraud would be the reſult of impunity, we muſt examine what means tend moſt to prevent them.—It is a maxim laid down by Mr. Locke, that *where there is no property*

about 2000 a year; and that in the reign of Elizabeth there were *only* between three and four hundred hanged in a year for theft and robbery, which, compared to the numbers hanged in our age, is very great, as we have not fifty hanged in a year for thoſe crimes. It is therefore a queſtion, whether the times are progreſſively mended ſince Henry VIII. or whether the ſeverity of the laws have made men more cautious of breaking them?---Elizabeth complained to her parliament of their relaxation, but it ſeems the morals of her reign were rather the cauſe of ſo many executions; and it is to be preſumed, that induſtry and commerce being then almoſt unknown, idleneſs and vagrant liberty promoted thieving and robbing; whereas in our time trade and commerce being extenſive, and the mind improved, the inducements to induſtry, and a better adminiſtration of juſtice, are the cauſes of our executions being leſs frequent.

See Harriſon's Deſcription of Britain.

property there can be no injury.—Juſtice thus reſpects property, and without property we are out of the reach of injuſtice.

In the paſtoral ſtate of man, property being undiſtinguiſhed, and in things only which afforded his immediate ſuſtenance, juſtice was unknown; for of what had he to complain, if all his limited wants were anſwered? Certainly nothing in regard to property, however great he found the neceſſity of aſſociating with his fellow creatures for the purpoſe of being guarded againſt force in regard to his perſon. In this ſtate ſomething like rude perfection exiſted, and nature herſelf was the only judge. When men had formed large and numerous ſocieties, and multiplied their intereſts and views; when they had emerged from their innocence and paſtoral ſtate, and proceeded to refine on the powers of nature and cultivate her works, they became liable to errors in proportion to their progreſs in human arts; civil ſociety ſuperſeded the paſtoral, and falſe objects of purſuit propelled them to exert their natural powers; falſe pleaſures were invented to animate them, and from a ſtruggle of all againſt all to enjoy the golden dream, all thoſe inconveniencies were introduced, which, from time to time, encreaſed to call on factitious juſtice to remedy and appeaſe. In this ſtate, property was rendered excluſive, and from firſt belonging in general to all, it was diſtinguiſhed into mine and thine; conſequently our deſires, hopes, fears, pains, and enjoyments multiplied, varied, and took place of all the peaceful bliſs, which nature in herſelf afforded to her creature man, who when he eſtranged himſelf from her, and ſought an artificial ſtate of civilization,

civilization, was ſet at a diſtance from her all-perfect rules, and ultimately became that fantaſtic, wretched being he has ever ſince been remarked for. He undoubtedly purſued his happineſs in the latter, though he loſt the innocence and ſimplicity he enjoyed in the former. Rudely perfect in the one, he became civilly imperfect in the other, which generated crimes and iniquity, and left him ſubject to all the miſeries of a ſelf-created, moral, and political world, in which, by a too great reliance on his own abilities, and ſuppoſing himſelf wiſer than nature, he forgot what he really was out of the hands of his Maker, and miſtook the work of man for that of God.

But in order the better to underſtand the idea of a civil injury, it will be proper to conſider what is generally meant by juſtice.

If man is *naturally good*, and endowed at his birth with no other paſſion than *ſelf-love*, the idea of juſtice is foreign to him; and could he continue through life to be what he is, when he comes immediately out of the hands of the great Author of Nature, it would be always unknown to him: but ſeeking, (through natural impulſe) the ſociety of his fellow-creatures, and being in ſociety, his *ſelf-love*, given him as a means of *ſelf-preſervation*, becomes ſelf-intereſt; conſidering his relation with them, and no longer confined to *mere ſelf*, his views expand with his paſſions, which relatively and comparatively ſpur him on to gratify himſelf at the expence of his fellows, to injure them, and bring upon him the name of *unjuſt*; however *good naturally*, he then becomes ſocially *wicked*; but he is made ſo by ſociety, and not by his Creator. Our firſt ideas of juſtice

tice commenced with our intereſt; our diſappointments therein regularly led us to the diſcovery of juſtice, and *we* marked with the name of *wrong* whatever interrupted our purſuit of happineſs. — Juſtice, in this early ſtate of man, was very indeterminate; every man, according to his individual view of things, being its interpreter, and explaining it agreeably to what *he* ſuppoſed was *injurious to him*, independent of his fellows, without having any fixed ſtandard to go by. But upon the increaſe of mankind, and the improvements of ſociety, this indeterminate juſtice was reſolved into ſyſtems.—The judgment of *all* individually, gave way to the judgment of *all in the aggregate*, and rules of right and wrong were eſtabliſhed by the copious name of law, which, inſtead of the vague and arbitrary ſenſe of juſtice, in individuals, determined with accuracy and preciſion; conſequently the law became a ſtandard whereby men were encouraged to do good, and avoid evil.—The very name and idea of law implies that there was *a wrong* to prevent, and *a right* to protect, diſcovered by mankind in their intercourſe with one another; but as the quantity of either could only be aſcertained by individuals according to their caſual, and in general erroneous meaſure, their legiſlature, as a refinement of themſelves, ſtudied ſuch laws as conduced moſt to the purpoſes deſigned by them; inſtead of a man's becoming a law-giver, or a judge in his own actions, or cauſe, and determining them according to the deluſive influence of intereſt, prejudice, or paſſion, he conferred the power of making laws, and judging them, on the government, or ſupreme power of governing. Theſe laws are valuable and ineſtimable, as they promote

promote the peace of ſociety, and guard mankind from injury and wrong; they are made as barriers againſt the ſocially wicked, for the welfare of the ſocially virtuous; to encourage good, by preventing evil. If every man had an internal ſenſe of goodneſs, there would be no neceſſity for laws, and there would be no crimes. Society and property being the very foundation of our ideas of juſtice, and laws rendered neceſſary as a ſyſtem by the general conſent of the whole, for the regulation of our mutual actions and dealings, the conſideration immediately occurs, how far they ſucceed in ſo deſirable a purpoſe? All men born under a well-regulated ſtate, educated and taught that particular actions will tend to their advantage or miſery, and that they will be puniſhed for evil, will be careful not to tranſgreſs their own laws, while all men whoſe education is neglected, and who grow abandoned to actions which are termed vicious, although they be given to underſtand that puniſhment is annexed to vice, often deem the law more vicious than thoſe actions which it puniſhes, and commit vicious actions in contempt of it; by which it ſeems true that the laws are not made on account of the good, but the evil; and whatever promotes the one and prevents the other, is underſtood in a general ſenſe to be law, regarding the affairs of men as citizens; the puniſhment conſequently (independent of the public, whoſe views interfere not at all between men in their civil concerns,) of a breach of this law, goes no higher than impriſonment, which puts a period to a man's credit, and by depriving him of his liberty, the firſt enjoyment he is bleſſed with, makes it deſirable to be obtained at the expence

of

of whatever may be juſtly due from him to another, with-held as a *private wrong*, either by breach of contract, expreſſed or implied; by deed or parole; or treſpaſſes accompanied by force, or eſpecial damage. Every civil injury therefore, marked out as ſuch between man and man, in a free ſtate, is ſuppoſed to have a civil remedy!

The meaning of juſtice and its concomitant law, thus underſtood; it is our buſineſs to enquire the public end of it in criminal affairs. Juſt as injuries were diſcovered by mankind in rude ſociety, which from the defect of individuals to agree in their invariable determinations of them, produced the civil code; ſo may it be ſaid, that crimes were reſolved and reduced to a certain definition, affecting not only the private peace of men, but the public ſafety of the ſtate. The ſovereignty is the party (ſo to ſpeak) that is immediately injured by a crime; and the prince, who is placed at the head of it, to put it in motion, is the party that ſeeks the remedy; not only for the benefit of himſelf, in his natural capacity, but of his community or people, whoſe repreſentative and chief magiſtrate he is. Every crime being an injury, not only are individuals ſuppoſed to be hurt by it, but the public at large. Whatever leſſens or takes from one entire whole, renders its reſpective parts diſcordant, and deprives it of its proper force and harmony. Take an eye or an arm from a ſubject, and you make him unfit for the ſervice of the ſtate. Diſable him from gaining a livelihood, and he will become a burthen, and chargeable to a pariſh. This

depriving the ſtate of a member, or making him a burthen to a particular part of the community, is both a public injury and a private loſs.

A crime is ſo comprehenſive, that even a civil injury was ſuch, before it was diſtinguiſhed by the œconomy of the laws; and altho' its conſequence is more ſevere, it is nearly the ſame as an offence, and may be comprized in the ſame definition we have ſeen of juſtice, which being at firſt unfixt, was made invariable by the laws in general. It is impoſſible to alter the nature of mankind, or entirely prevent the diſorders which their paſſions, and the oppoſition of private intereſts will produce. It is their common intereſt, that what they have *marked* as criminal, and collectively reſolved as ſuch by law, ſhould not be committed; yet to free themſelves from criminal actions in civil ſociety, would be to annihilate themſelves. Men and crimes are there inſeperable; ſo long as the former aſſociate together, the latter will prevail, and nothing will prevent them. They ſeek ſociety as a protection againſt crimes leſs injurious and diſpenſible, than are found in a ſtate of war and original nature. As crimes reſult from the mutual commerce of men, and ariſe from their efforts to evade the laws they have made as a mutual benefit to all; and as it is impoſſible altogether to prevent them; all that can be expected is to *leſſen them* in quantity and quality, to which end puniſhments have been deviſed, but with what ſucceſs has hitherto been unknown.

If

If man be agreed to be originally an imperfect being in his ſavage ſtate of domeſtic or hoſtile ſociety, he will not be made perfect in any other, either by himſelf or others. Imperfect by nature, he will ever remain ſo; and tho' ſociety, by its cool and deliberate o dinances, tends to make him better, his infirmities prevail, and he *in practice* breaks thoſe very laws, he thought and ſubſcribed as wiſe *in theory*. Were he a perfect being, he would require no law: he would not be fitted for a temporal world. He is *civilly* the reverſe, * and his infirmities preſerve him, add vigor to the ſociated body, and by the conflict of his paſſions, the contraſt of his character, and the contradictions of his intereſts and purſuits, he always finds ſomething to hope for, ſomething to ſtruggle for, and ſomething to keep him in action; inſenſible that while in his career after ſhadows, his whole enjoyment but conſiſts in the momentary ſubſtance of preſent poſſeſſions. Thus ſet in motion, like all other machines, his different ſprings of action wear out, often want repair,

* To avoid the appearance of contradiction here, the author means not to ſay that nature is imperfect, or that man was originally ſo. He has already ſaid that the rules of nature are perfect; and in ſuppoſing man to be the reverſe, he only meets the idea often ſuggeſted, that ſocieties were eſtabliſhed under man's weakneſs. Thus the author of our being having implanted in his conſcience all that is neceſſary to direct him right, which may be called her perfect rules engraved in a natural monitor, he has left him freely to himſelf to act as he pleaſes. Ignorant, weak and innocent, tho' prone to thoſe evils he ſeeks ſociety for protection againſt, he grows imperfect, in regard to himſelf and the moral world; however perfect he is in regard to his Maker, who left him to ſeek his happineſs with all the means in his conſcience whereby he may attain it.

but are ſeldom repaired. A bad ſpring may be amended, but call it into play, and we ſhall find the *artiſts* hand has been applied in vain! Laws may be a barrier to vice; but virtue, on whoſe account they are made, would ceaſe to be what ſhe is, were *vice unknown*. They may be made to prevent injury, and eſtabliſh artificial juſtice; but nature, unrefined nature, will leap over their decrees, and actions be conſtituted criminal, which being natural, cannot be prevented.

A crime is agreed by all writers on the ſubject, to be an act committed, or omitted in violation of a law, which commands or forbids what is right or wrong, as conſtituted ſuch by the experience of human events: it includes an injury, and is a private wrong, affecting individuals and the public; againſt which, puniſhment is intended as a precaution, either by the amendment of the offender, the deterring others by the dread of his example, or depriving the criminal of the power of offending again. In all theſe, public and private happineſs are the object: if the firſt fail, the terror of the laſt will remain as a warning to others; if that warning be deſpiſed, puniſhment will take place, not as an atonement, but a prevention. Criminal laws thus underſtood, are calculated to operate on the human intellect, to prevent crimes, and thence not to puniſh them; unleſs they are made merely to puniſh, and not prevent them, which cannot be the caſe in a free country. They ſtrike at the intention, and by reſtraining it, they prevent the ill forbidden, without confining or reſtraining the man. The puniſhment annexed to the commiſſion of crimes,

regards

regards the intent only, which it endeavours to ſtifle in the intellect, if the perſon be ſane. The criminal laws are called the bulwarks of our liberty, ſafety, and happineſs: if the dread of their penalties fail in protecting theſe, their ſpirit will be ineffectual, and criminals will ſuffer, not for the ſake of the injury *paſt*, which cannot be repaired, but in order to avoid the like *in future*; and altho' the injury was inevitable, and having happened, could not be otherwiſe, it would be ſtripping the laws of their force to ſay, that the very actions againſt which they provide, ſhould not be reſtrained *in idea*, as evil, and ſubject to puniſhment if committed. Intellectal liberty cannot be affected by ſuch a reſtraint, which nothing but the fear of puniſhment will give; it is entirely free in regard to choice, and influenced to adopt the good, for the ſake of avoiding a determinate puniſhment annexed to the evil, which may nevertheleſs be committed *. As criminal laws regard the *intention* only, the idea of the act prohibited ſhould be rendered abhorrent; otherwiſe, if men for the ſake of unlimited liberty, ſhould be encouraged in the idea of committing the act prohibited; nay, that they ſhould be *tolerated* † to teach and avow it, the legiſlature

* See Preface.

† The verb *tolerare* being a verb active, whenever it is uſed it implies that ſome act is permitted ſpecifically; as for inſtance, a deputation from a lord of a manor to his bailiff, or other perſon, to kill game, is a toleration to that bailiff; and his killing of game in that manor, is ſpecifically warranted againſt the penalties of the game laws, which it defeats. The very expreſſion "To tolerate," conveys to us that ſomething is actually tolerated; ſo that where nothing is tolerated, toleration is a mere ſound, meaning nothing.

giſlature would pave the way to guilt for the ſake of puniſhment, the laws would be uſeleſs, and criminals would multiply rather than decreaſe.

All actions forbidden in the criminal code, are virtually forbidden *in idea*; that is to ſay, the idea that they are proper to be committed; and not ſimply the thought of them, becauſe thought cannot be controuled; and ſtates, inſtead of truſting to reaſon to point out their iniquity, among ignorant and infirm beings, endeavour to make that idea painful *. The action being injurious, it is the buſineſs of the law to prevent it; firſt, by making it diſguſting in the idea; then terrifying the intellect againſt it; and when that fails, by puniſhing the criminal who commits it with *certainty*, and without remiſſion, on a clear proof of his guilt.

Were laws made to puniſh, and not prevent evil, legiſlatures would ſit in the cauſe of revenge, to ſtudy puniſhment *ex poſt facto:* no act being criminal but what is legally forbidden, no law puniſhes any acts but what are *mala prohibita*. Tho' laws puniſh in their execution, which it is their ſpirit to prevent, they ſhould never take place but when criminals prove incorrigible; and as ſuch, they anticipate puniſhment, ſince none but lunatics would execute it on themſelves, when aſſured that it is impoſſible to avoid it on committing an act which

* A convicted felon at the bar of the late Judge Burnet, ſaid, "It is very hard to hang a man for ſtealing a horſe;" "you are not to be hanged," replied the judge, "for ſtealing a horſe, but you are to be hanged that horſes may *not* be ſtolen."

which will certainly lead to it. What man who knows not how to ſwim, and who does not deſire a voluntary death, would plunge himſelf into deep water with the certainty of being drowned? None would; nor would any man conſequently be guilty of a crime, with the ſame certainty before him of being hanged for it.

It is univerſally agreed that *example* is the only end of all puniſhments as well as rewards. If the laws puniſh, it is not out of reſentment, but for the good of the innocent, who may otherwiſe deſerve puniſhment. If they reward, it is not ſingly out of favour, but that others may deſerve to be rewarded. Thus good laws are every man's friend, no man's foe; they commiſerate the puniſhed, and rejoice with the rewarded, whoſe fate are equally an example to others.

The laws, nevertheleſs, leave mankind at full liberty; their will is ſtill free; the abuſe whereof is the only object of legal cenſure; no reſtraint is laid on the freedom of thought or enquiry; every freeman may of right lay what ſentiments he pleaſes before the public; as indeed he may, if he pleaſe, tho' *not* of right, commit any act forbidden by the law; but if they be deſtructive of the ends of ſociety, they become criminal, and of courſe puniſhable. As a man may be allowed to keep poiſons in his cloſet, but not to vend them as cordials, ſo a robber or houſebreaker may think theft and burglary harmleſs and juſtifiable; but he muſt not carry either into execution, unleſs he reſolves to provoke the penalty of the law, which forbids both. To cenſure the licen-

tiouſneſs of thought and enquiry, is to maintain its liberty; and to puniſh a criminal, when the terror of puniſhment has proved ineffectual, is to make men, *if poſſible, better*; or by making crimes appear horrible in the mind, to lead them to adopt what is virtuous inſtead of criminal *.

According to the principles of philoſophical neceſſity, all actions are effects of ſome cauſe in the mind; and man being free, he has *a ſelf determining power, governed by conſideration and judgment, which precede his volition, and direct it:* all actions neceſſarily follow their cauſes, or volitions; and as they cannot be otherwiſe than they are, when committed, it ought to be, and is the duty of ſociety to form the minds of individuals, ſo that they may deteſt what is conſtituted *bad by law*; otherwiſe, as men are every thing we find them, from their education, habit, and example, let theſe be corrupted, neglected, or tend to evil, and their actions will be evil in conſequence. But in order to avoid the idea of fataliſm or predeſtination, which ſuppoſes all things to come to paſs *in ſpite of man*, philoſophical neceſſity is oppoſed to it, and is diſtinct. To act under neceſſity, is making our actions the inevitable effect of ſome cauſe in the mind, which determines our will to commit them; which will is our own, and is governed by a power of proper ſelf-determination. On the contrary, to act under fataliſm, is to act *without any will at all.* When we ſay that effects will invariably follow cauſes in ſpite of ourſelves, and that our will to do

* See my eſſay on intellectual liberty, publiſhed by T. Cadell.

do what may be called a good or bad thing, will accordingly produce either; it does not imply that there is any fataliſm or predeſtination in our actions, which will neceſſarily be definite under definite circumſtances; as for inſtance, my conſideration and judgment influences my will to commit an act to day, which on the morrow I think wrong: the thought on the morrow influences my will; the cauſe is changed in the change of my conſideration and judgment; and I then as neceſſarily determine not to commit a like act again: yet if my mind be in the ſame condition as it was before, the ſame effect in the ſame act muſt neceſſarily follow; becauſe of courſe the will to commit it is the ſame, which is nevertheleſs my own. Nothing can be plainer to ſhew, that fataliſm and predeſtiny have no analogy to neceſſity; which would vaniſh, if they prevailed, and man be deprived of any will, and all power of proper ſelf determination: fataliſts would make the world, and all things effects of *one general cauſe*; and, like a watch, dependant on only one main ſpring or power, which ſetting the whole in motion, works involuntarily, and by a foreign force. In ſaying that men's actions follow their volitions, in ſpite of themſelves, it is and will be underſtood that thoſe volitions being effects, they will neceſſarily follow their cauſes, *in ſpite of man* who commits them: whereas, if actions be committed under fataliſm and predeſtiny, men have neither conſideration nor judgment, nor a power to will, which ſeems untrue.

Mankind, while left free, may want power to avoid committing actions, which have been conſti-

conſtituted evil; but they cannot philoſophically be ſaid to be anſwerable for what they could not avoid. It is the ſtudy of the criminal laws to correct and prevent that evil, which will neceſſarily happen in ſpite of all human invention; conſequently criminals ſuffer eventually for the inevitable effects of certain cauſes which influence their moral conduct: let a gang of thieves, for example, teach an ignorant boy, that by certain methods of breaking a houſe, or perſonal robberies, he will ſucceed in his end, and be undiſcovered, and he will liſten to the inſtruction, and turn thief, in the hope of eſcaping detection, not being convicted if taken or tried; the mitigation of his ſentence, the death of his proſecutor, a flaw in his indictment, or a pardon: the crime to him appears *harmleſs*; his ſtudy is to avoid the laws, which with him is the only iniquity. But let him on the other hand be taught, that robbing or taking any thing away from another by force, *is wicked and injurious*; lead him from the ſcenes and practice of evil, and make him uſeful to himſelf and others, by induſtry and good example; and the chance is in his favour, that he will prefer to iniquity the practice of virtue. It is ignorance that introduces idleneſs, and both occaſion puniſhment. Wiſdom and knowledge promote induſtry and employment; the one improves the underſtanding, the other teaches us to employ means to ends. A knave and a fool in the proſecution of their wickedneſs, have a choice; and tho' led on to gratify it, they are not without a ſenſe of doing wrong, which they preferred from neceſſity, and as the effect of a vicious determination; therefore neceſſarily

acting

acting under it, they may, when the effect is experienced, be ſenſible that wiſdom and virtue were preferable, which they lament they did not prefer; that is to ſay, having compleated their evil, they ſee it in a light that did not ſhine upon them previous to it; or the apprehenſion of detection may make it painful. Every man who deſerts virtue, and gives himſelf up to vice, is ignorant; for no wicked man, let his abilities be what they may, can be a wiſe one; it is ignorance that abandons him, and being abandoned, he is ignorant. Actions being the inevitable conſequence of our volitions, we are not naturally or philoſophically anſwerable for them; becauſe our volitions being governed by conſideration and judgment, which determine them according to our wiſdom or ignorance, our experience or weakneſs, our education or habit, the effects muſt conſequently be definite, whether good or bad, as we have already ſeen, in ſpite of ourſelves.

Now as actions will neceſſarily be committed in defiance of the laws, and as they cannot be otherwiſe than contingently, they may or may not be, is it not a hardſhip to inflict a puniſhment for what muſt and will happen? or is it a juſtifiable effect of our living in ſociety, that ſome of us ſhould be cut off from it, becauſe we cannot be otherwiſe than we are? What merit can there be due to one man, who as neceſſarily does good as another does evil; while, perhaps, he who neceſſarily does the one, would have as neceſſarily done the other under the ſame determination of mind? If actions render men criminal but according to the miſchiefs they produce to themſelves or others, puniſhments

may

may influence and move their will, either to prevent what ſocieties have conſented to call bad, or promote good. Actions proceed from the mind. Shall a man then ſuffer for the errors, rudeneſs, or barbariſm of it, when it was not in *his* power to make it otherwiſe? Shall the man be praiſed for the refinement, the delicacy of it, as produced by a virtuous education and habit? The one may be puniſhed, for what nature in her uncultivated operations directed; the other applauded, for what was equally as natural, under taſte and ſentiment, and as little to be avoided. Virtue having no merit is her own reward; ſhe ſecures to herſelf an aſylum againſt all puniſhment, and ſmiles over human events, and the accidental advantages of habit and education, which ſet her above vice; but if born of the ſame parents, and brought up under them, ſhe would, by a change of her nature, ſhare the ſame fate in puniſhment.

Virtue and vice being of human birth (tho' we are naturally diſpoſed to the former) and ſubject only to human conſequences, they have nothing to do with the univerſal, inevitable and immutable laws of nature, whoſe cauſes determine their invariable effects in ſpite of man. To oppoſe her is to puniſh her creatures; nature may be pleaded as the authoreſs of every human invention, directing it in ſociety to ſtudy thoſe preventives of her effects, which it has conſtituted bad, yet they will ſucceed their cauſes with certainty in deſpite of them; as puniſhment neither repairs or alters the evil committed, it is inflicted to influence or move the will of others; and ſo far as it tends to make men avoid committing a like evil, it is

uſeful

uſeful and defendable; but in proportion to the number of actions rendered criminal, ſhould be the care of the law in preſcribing puniſhments to prevent them: puniſhment for trifling offences rather encourages crimes than prevents them, and ſtigmatizes the code that records it. It is the duty of the legiſlature in fixing the criminal juriſprudence, ſo to apportion the puniſhment in all caſes where it may be thought expedient, that it ſhall not exceed the nature of the crime intended to be corrected *. This is a duty which the weakneſs of man has hitherto concealed. In ſome countries the innocent have often been involved with the guilty, and puniſhments have been executed as a gratification. In others they have exceeded the bounds of common humanity, by ſubjecting men to death for breaking the mound of a fiſh-pond, cutting down a cherry-tree, &c.

The legiſlature or delegated body of men in civil ſociety have indeed an uncontrouled power to a legal intent; their will is the law, and there is nothing but what they may mark with the name of right or wrong. The only delegated rule to them *is utility*; the *greateſt happineſs of the greateſt number*. If they infringe on this, by the introduction of principles ſubverſive of the conſtitution, of which they are in ſtrictneſs truſtees, they abuſe their power, which then recurs to thoſe who delegated it †; not to the deſtruction of all government, but for

* When criminal laws derive each puniſhment from the particular nature of the crime, liberty is in the higheſt perfection. MONTESQ.

† It is among the errors of Mr. Locke, that he makes the recurring of an abuſed power amount to a diſſolution of all government.

for its ſecurity, according to a conſtitutional eſtabliſhment; as happened under the convention parliaments at the reſtoration and revolution. The remedy in ſuch caſe is among the people, who all legally participate in their own government; and who, on any violation of the truſt repoſed by them in their king, as their chief magiſtrate, and aggregate repreſentative; or in the other branches of the legiſlature, have a right by nature, policy and reaſon to dethrone the one, and of courſe diſſolve the delegated power of the other. The legiſlature then, by preſumption, paſs no laws but what tend in *their conſequences to promote the greateſt happineſs of the greateſt number on the broad baſis of general utility.*

Criminal laws conſider man as a free agent, and maſter of all his actions, regardleſs how they are, or may be influenced; if otherwiſe, and unrefined nature had ſuffered us to live as mankind are fancifully ſaid to have done in the golden age, wherein they poſſeſſed neither wants or fears, but all was peace, plenty, and happineſs, in common without diſtinction, no legiſlature would have been neceſſary, no criminal laws would have been required or made, becauſe nothing would be criminal; a ſtrong proof that crimes are the offspring of ſociety, and the diſtinct and ſeparate intereſts and paſſions of men!

If we be maſters of our own actions, which we are ſuppoſed to be in ſociety, the criminal laws, when any of them are found to be injurious, are directed at our minds. They endeavour to make us chooſe the performance of good, and to abhor the evil: it is impoſſible to reſtrain the actions of men, or prevent their diſorders,

diſorders, but by depriving them of perſonal liberty; except you affect their intellect by terrors, that particular actions if committed will certainly ſubject them to puniſhment. In fact, the legiſlature deviſe laws to prevent, what the neglect of education or the force of example and induſtry will infallibly occaſion; and while it ſuppoſes every man equally capable of knowing thoſe laws, and equally intereſted in and conſenting to them, it impoſes on and entangles thoſe moſt who are the leaſt concerned in and conſenting to their formation. They command good and forbid evil. They mean to correct and civilize the will by their influence, without putting men in fetters; but under ſavage liberty they are robbed of their force, their power abates, and they puniſh actions, when they cannot correct or prevent them; that is, the laws endeavour more to prevent evil, than individuals to make one another good. Were all the members of a ſociety firſt to prepare each other to the practice of imperative right, the legiſlature would be the better able to enforce it: and were thoſe members to act in concert with it, poſſibly there would be leſs crimes; and every member finding an intereſt to be juſt, none would be ſubject to the pains preſcribed, and annexed by the legiſlature to acts of injuſtice.

Lex anchora regni. The laws are the anchors of the kingdom; they are the conditions under which men conſent to live in ſociety; altho' when they conſented to them they did not, becauſe they could not conſent to *do violence to human nature.* As far as general utility would extend, extended their conſent; and every law that had not a general benefit in view, was really

really and intrinſically no law, but an impoſition; to reſiſt which, was an undoubted right, and puniſhment, tho' annexed to a breach of it, was fraudulent and unjuſt. It is for the advantage of ſociety, that all laws which it be poſſible to obey as uſeful, ſhould be obeyed; and if not, that as far as puniſhment will go, they ſhould be enforced; for, ſuch is the benefit to gain, and miſchief to avoid by obeying them, as more than compenſates for the miſchief of ſo much puniſhment as is requiſite to oblige men to obedience. Whether the dependance of benefit and miſchief (that is of pleaſure and pain) upon men's conduct, in this behalf, be as here ſtated, is a queſtion of fact, to be decided in the ſame manner that all queſtions of fact are to be decided, by teſtimony, obſervation, and experience, thoſe parents of all wiſdom. So long as the probable miſchiefs of obedience, and conſent are leſs than the probable miſchiefs of reſiſtance, the laws, or mutual conventions, which ſuppoſe all men to be active parties, ought to be obeyed; obedience to them is obedience to ourſelves; but to obey them in objects that interrupt *general good*, is unlawful, becauſe we are not bound to obey ourſelves in bending to any thing that tends not to that good, or the good of ourſelves, which ought to be involved in the *general good*. If the ſupreme power were not created to ſuch an end, it would be created to *any*; and inſtead of *the greateſt happineſs of the greateſt number*, it might as well ſtudy their greateſt miſery. Men might obey at all events, and the ſupreme power rule at will. But all this would not be binding; it would neither be men's duty to

obey

obey what would do them harm, nor would it be the duty of the ſupreme power to make laws to that end, or to puniſh men for the breach of them; becauſe neither that power exerted, nor men obeying it, would produce happineſs or mutual welfare. *Public and private utility would be wanting, and the ſtate would be wretched if not imaginary.*

Laws are the barriers of conſtituted evil, againſt which the terrors of their penalty is the only ſecurity one man has from the fraud or violence of another; but what is this to me? My anceſtors may have voted for a particular law a hundred years ago; my father for a repeal of it laſt ſeſſions of parliament, yet enacted or repealed, it has nothing to do with me, who am nevertheleſs a ſocial, political, and civil being. It may *legally* ſkim over me, as an orbit unheeded, and unreſpected, unleſs like the ſun in the torrid zone it ſcorch and offend me, as an exotic; but if it give *a genial ray, an influence to my advantage, in common with others; if it bring, like the dove, peace in its beak, and ſpread a general utility, the obligation is intrinſic, and I am bound to obey it, as the higheſt principle of reaſon and right, for every point of practice whatſoever.*

As education and habit make men every thing they are, laws will at beſt be uſeleſs, and to a degree ineffectual. Let human actions be what they may, they cannot be otherwiſe than they are, whatever they may be *contingently* under the influence of vicious or virtuous volitions; to praiſe therefore the good, and puniſh the bad, is to praiſe a man for what he does not deſerve (becauſe his reward is internal, and he was obliged to be good) and to oppreſs him for

what was inevitable, but which from reflection and compunction might have induced him ever after to avoid the action that was injurious.

Do as you would that others ſhould do unto you, is a moral precept, taught and ſuggeſted in ſociety, after mankind quitted their rude and independent ſtate of nature. It is univerſally approved, but not univerſally practiſed. Why? but becauſe we act caſuiſtically, under ſpecious pretenſions that all our actions are proper, altho' thoſe actions practiſed againſt ourſelves would give us pain. Viewing things differently at different times, according to our good or bad logic, the violence of our paſſions, and all thoſe circumſtances which change the appearance of objects in our fluctuating minds, overrule and controul us as mental cauſes that direct our volitions, making whatever happens in conſequence their certain effect; and as they cannot be otherwiſe, they muſt be concluded right *in themſelves*, tho' if morally wrong they are puniſhable *.

It is not the fear of God, but man, that makes us in general refrain from evil; religion therefore would be but an indifferent fence againſt it, were the temporal magiſtrate not empowered by the voice of the aggregate body to inflict a puniſhment for it; yet exceptions have been ingenuouſly made that religion, as it points out eternal torments for the puniſhment of wickedneſs, more forcibly reſtrains it, and renders mankind more conſcious of virtue and

* The ideas of truth, juſtice, and beneficence, are created by the ſimpleſt aſſociations, and are perfectly underſtood by thoſe who act well, tho' not always perhaps by thoſe who reaſon.—*Naturam expellas furca licet uſque recurret.*

and its ineſtimable worth, than the fear of any temporal puniſhment on earth. It is certain that the virtuous are always happy, becauſe in conſtant communion with their God; while the wicked are miſerable and unhappy at the recollection of their vices, which they abhor. But thoſe readers who may want information reſpecting the origin of virtue, are referred to the elegant Shaftſbury, vol. 2. Characteriſtics

As God has implanted in man's conſcience all that is neceſſary to direct him aright his free agency, if he purſue wrong, will be his misfortune; the imbecility of his will and his corrupted habits will hurry him into a forgetfulneſs of God and nature, which are perfect, conſign him over to ultimate wretchedneſs, and make him deteſtable to himſelf and ſociety. It is the buſineſs of good laws to make him otherwiſe, as to the latter; of true religion to give him a taſte for virtue, as to the former; and theſe united, will make him valuable to himſelf and others; his free agency will make him honourable, and prove that his liberty is exerted to a general and particular good; that his will is determined by a virtuous cauſe, having for its effect undoubted happineſs.

To confine human actions to conſtituted and relative juſtice; and to reſtrain them from conſtituted vice, it would be well indeed if no motive ſhould ever ariſe in the mind, but what would *definitely* produce virtue and morality: but nothing differing more than man from man, and as objects cannot be ſeen by all men in one and the ſame point of view, ſome thinking this, or others that right, and many not thinking at

all, they variouſly purſue their happineſs at the riſque of miſery to themſelves, and each other; an infallible inſtance of their weakneſs and of human infirmity. Juſtice and virtue being of neceſſity defined, it is by an attachment to them that we become good citizens; but to neglect them, and follow our own deceptive ideas, is to glide into their contrary, and be obnoxious to the laws that are made to harmonize the mind, and direct its determinations to the ſtudy and performance of what is conſtituted by ourſelves juſt and virtuous. To do this is to influence the motive, otherwiſe diſorder muſt take place, and men relapſe into their primitive condition, by breaking or treſpaſſing on the ſocial bond, either in actions againſt the ſtate, or private individuals. The ſtate in a public ſenſe, and its members in a private one, muſt be watched for the ſake of the advantage of the whole, which ought to be preſerved entire. While the one is ſecured againſt danger, each individual, who is ever ready to take away from the general maſs more than his own, muſt be ſecured againſt the other, leſt ſociety fall into its original chaos. To preſerve civil life, the motives in the minds of its reſpective members ſhould be influenced by puniſhment; and as nature and neceſſity forced men into it, neceſſity and nature obliges them, in the aggregate, to preſerve it for their common happineſs. Puniſhment is meant for ſo ſalutary an end; it derives its power from the unity of the members of a ſtate; but if it be exerted not to anſwer its end, according to the inducements to commit criminal actions, deſtructive of public ſafety and happineſs, it will be exerted in vain, and produce miſchief inſtead of advantage.

advantage. The great misfortune of puniſhment is, that it attempts to *alter*, and not refine human nature; to convert, but not to work upon its plaſtic powers: it pays not a ſufficient reſpect to that precept, "*train up a youth in the ways he ſhould follow when he grows old*;" but leaving him too freely to himſelf, to wander in the paths of ſocial error, it exerts itſelf over him when he *is adult*, for the effects of his habits *in his infancy*; and by ſtriving then to amend him, it almoſt preſumes to reform the works of God himſelf in the conſtitution of his rude creature man, and to give him a ſecond birth.

That puniſhment is moſt calculated to promote the end propoſed, which makes the ſtrongeſt *impreſſion* on the mind, without diſtreſſing the body; and as the occaſion of it encreaſes with the encreaſe and extent of our ſpecie and dominion, it cannot be exerted too cautiouſly and too certainly. It is confirmed by experience, that puniſhment has neither the influence, nor the effect propoſed where moſt it is required; the ignorant and inferior part of the people deſpiſe the law the moſt, and fall moſt a ſacrifice to it: very rarely indeed is a man of education or taſte exhibited as a victim to violated juſtice; becauſe ſenſible of the injury of criminal actions, independent of the dread of puniſhment, he feels the influence of wiſdom, which teaches him that to commit them would be heinous; whereas the ignorant and vagrant, who are not indebted to the lights of nature or education, are led away to iniquity; and not viewing certain actions as criminal before they commit them, are made ſen-

ſible of it after, on detection and reflection. Hence the many criminals found among the dregs of the people, who are puniſhed in compariſon to the few, very few, who offend among men of diſcernment; which excites our compaſſion over the infirmity of human nature, and ſhews that in proportion to its weakneſs and corruption, is the frequency of puniſhment. We pity the criminal, but condemn the crime; altho' that crime be not to be imputed to the criminal himſelf, but to the neglect of his education, the meanneſs of his birth, and the ſervility of his condition; except in thoſe caſes where it be otherwiſe, but where nevertheleſs the crimes were equally inevitable. In ſhort, after much repetition, which was unavoidable, the vulgar, meaning thoſe who have no general ideas or univerſal principles, act in conſequence of the moſt immediate and familiar aſſociations, and determine their volitions haſtily and falſely, according to legal rules and the nature of things, while the moſt remote and complex only ariſe in the mind of thoſe who are paſſionately attached to a ſingle object, or to thoſe of higher underſtanding, who habitually compare a number of objects together, and form concluſions, the reſult whereof are actions leſs dangerous and injurious; or, as Mr. Hume ſays, it rarely happens that a man of taſte and ſentiment is not at leaſt an honeſt man, whatever frailties may attend him.

Crimes however being conſtituted, puniſhment reſults of courſe as a means to prevent them, which happen more effectually by its *certainty* than *ſeverity*, and makes a ſtronger impreſſion

preſſion on the mind, than if attended by torment or cruelty: certain evils, tho' ſmall, affect and terrify on their approach; while the bare apprehenſion of a greater, will die away. It is the terror and certainty of puniſhment ſolely that muſt work the cure, and make men ſocially honeſt; or being ſo at one time, keep them ſo *always*. The ſeverity of puniſhment ſubverts its own purpoſes, by making criminals cruel as well as fraudulent; and impunity is the general conſequence; ſince no ſyſtem of legiſlation has, or ever can render any puniſhment more than temporary, which from its frequency will be no more a terror than the mere and momentary privation of life.

CHAP. III.

The Subject continued.

THE power to puniſh being inherent in all individuals who aſſociated together for the protection of all, they all became veſted of that power; and by equality the right to puniſh is founded on the neceſſity of defending all againſt all and the public: it is alſo veſted in all, but transferred to the ſovereign power, and puniſhment may be called juſt, ſo far as the liberty and welfare of the public, preſerved by the ſovereign, is inviolable; but ſeeing that that liberty and welfare are inſecure, we lament its ſeverity and its cruelty; as the conſequences of a government in which, as a principle, virtue does not equally prevail; the puniſhment of death, challenges the utmoſt efforts of human reaſon to juſtify it. If all our actions be inevitable, and their motive be only influenced by the fear of puniſhment, or the force of precept and power of example, all puniſhments, though deviſed for a good purpoſe, but not ſucceeding, muſt be regretted; particularly when they take away the life of another for doing what was not in his power from the *certainty of cauſe and effect between his volition and action to avoid.* It is true, that when we entered into ſociety, we ſubmitted and conſented to laws which repreſent the general will; but none of us giving

giving to others a right to take away our lives, however that right may be inherent in ourſelves to be exerciſed by our own hands, that legiſlature which aſſumes it is particularly anſwerable for it, as an exertion of unwarranted power, although it be pretended that as they are the repreſentatives of the whole community, they do nothing but by the conſent of each individual in it. Have the many abject wretches who have been put to death, and who never had any intereſt or ſhare in the legiſlature, conſented that they ſhould be deprived of life? Certainly not, and even thoſe who pretend the contrary know little of the tyranny they practiſe in taking life away, becauſe they know little of the nature of thoſe over whom they tyrannize. They expect that men, againſt whom the puniſhment of death is awarded, ſhould be as wiſe and ſenſible as themſelves, or forgetting their ignorance and incapacity, impoſe death as a puniſhment. In no inſtance whatever can there be a neceſſity for taking away the life of a ſubject, *except for murder* *; we may open the folios of hiſtory, and turn our attention to the example of the Ruſſians under Elizabeth and Catherine for a proof that the welfare and happineſs of a ſtate may be maintained without the loſs of human blood.

Certainly *the greateſt happineſs of the greateſt number is the ſole and principal object of the legiſlature*; conſequently the *leſs* happineſs of the *leſs* number muſt give way to it; and as ſuch it is a misfor-

* The Decalogue ſays, Thou ſhalt do no murder; that is, thou ſhalt not kill with a previous, malicious intent, as explained by the law of man. But to kill by the hands of ſovereignty in the caſe of murder, is to puniſh for the ſake of good, and to preſerve ſociety. *See after.*

misfortune more than a crime, that the latter by unavoidably breaking the criminal laws, incur their pains and penalties. It being then their misfortune, it ought equally to be the ſtudy of the legiſlature, not to impoſe *death as a puniſhment* except for murder, becauſe it puts an entire end to the criminal, and deprives him of future amendment in the change of his vicious inclination, and of a poſſible benefit to himſelf and ſociety. The puniſhment of death is juſtifiable but in the caſe of murder, though not always inflicted for inferior offences. It is enjoined by the Levitical law †, but to award it in all criminal caſes, is to ſport with power, and raiſe offences in proportion to its enormity, inſtead of preventing them. The right to puniſh is founded on the neceſſity of preſerving life, liberty, and limb; it may extend to impriſonment, forfeiture, fine, baniſhment, and infamy; and general conſent may warrant it, as tending to the good of the community: but death is a puniſhment to which no man has a right or power to conſent; he cannot confer even a right he may have to commit it on himſelf, on another.—A right to ſlaughter is one thing; to repair and correct, another. To ſlay, is tyranny; to repair and correct, is a duty, becauſe men ſeek ſociety to be guarded againſt the evils they experienced out of it. Laws of retaliation would but be equitable, where puniſhments are applied to the *intention*,

† Although revelation is here referred to, as favouring the natural juſtice of puniſhing murder with death, it is not the buſineſs of this Eſſay to make revelation a particular guide in diſcuſſing a queſtion of puniſhments, as many are to be found therein not at all warranted, or honourable to human nature.

intention, and they are only practiſed in the caſe of murder; it is there *life for life*, and the murderer, by following the perſon he has murdered, is diſabled from repeating a crime of ſo black and horrid a nature; his life would be injurious *to himſelf and others*; no atonement could be made for his crime; he may feel compunction, but never can repair his offence; impriſonment would be uſeleſs, and, loſt to all pleaſure, death is his relief. It is neceſſary, as it prevents both *the miſery of his living an example of his own wretchedneſs*, without benefiting by his life, and his committing murder a ſecond time.—Beſides, death being momentary, the impreſſion of it made on others, for whoſe ſake it is principally inflicted, may be violent, but it is not durable; it excites compaſſion for the perſon ſuffering it, more than an *abhorrence of the act which is paſt* for which he ſuffers; and as it is confeſſedly inflicted for the ſake of the ſpectators, not the criminal, it is regarded as to the effect, which, if trifling, as it really is, proves inſufficient, while a puniſhment *leſs ſevere and more certain*, either by fine, impriſonment, forfeiture, baniſhment or infamy, by a greater continuance will make a deeper impreſſion on others, be more laſting, and of courſe go farther to anſwer the end propoſed.

An exceſs of clemency and forbearing to put in execution criminal laws, in caſes where the offences committed are injurious to the public at large, is a very great evil. In matters that concern the reformation or internal amendment of ſouls, rigour is not only uſeleſs, but prejudicial, becauſe the fear of temporal puniſhment does not make penitents but hypocrites; it only checks the external execution of vice, and con-

concentrates the evil intention within the ſoul, where it produces a new ſin in the hatred it excites againſt the magiſtrate.

But notwithſtanding the certainty of puniſhment may tend more to leſſen crimes than its ſeverity, there are reaſons why clemency ſhould prevail in the executive branch of the legiſlature, as a ſort of equity to mitigate the rigour of the law's ſtrict letter. Many men have ſuffered death, whoſe antecedent virtues and intrinſic merit made them valuable to government and the community; their puniſhment therefore, by being certain, was alſo ſevere. It is the quantity of general good, more than the ſpecific evil we find in men, that pleads for clemency, however deſerving they may be of rigid puniſhment for the latter; for which reaſon it ſhould never accompany the certainty of it. If the circumſtances of a crime, or the caſe of a ſuppoſed criminal, do not afford motives for departing from the letter of the law, no plea for clemency remains, becauſe ſuch departure would be rather injuſtice; and it is impoſſible that the ſame action ſhould be both good and bad at the ſame time. An incorrigible offender, who by a conſtant round of criminal actions, after frequent puniſhment under death, deſerves puniſhment for life; he ſhould be deprived of that liberty he always abuſes to the injury of others, and ſuch puniſhment is a public good. Father Feyjoo, a Spaniard, relates that the Aſturian hero, Pedro Menendes, Governor of Florida, diſobeyed the expreſs orders of his King, and violated his commiſſion; for which, according to law, he deſerved death. But the King (Philip II.) pardoned him in a manner that his crime became his reward. His ſignal merits had

had long been known and long been neglected; he had ſuffered numerous diſtreſſes and inconveniencies. The clemency therefore of the king was a mark of political grace and favour; it would have been cruel to puniſh him, after ſo long neglecting to reward his public merits, and the ſtate would have loſt a profitable ſubject, to the injury of itſelf and the detriment of others, who would have avoided public truſts.

Clemency then is but another name for equity in the boſom of the ſovereign, who leſſens the puniſhment of the law in death, according to the delinquent's condition, and not according to his mere capricious will, which would conſtitute clemency a vice, by pardoning the moſt attrocious offender, againſt whom juſtice was demanded by thoſe who were acquainted with the circumſtances of his crimes; puniſhment is warranted but by the neceſſity of removing one evil to prevent another. It ſuppoſes mankind maſters of their actions, and that they are ſuperior to paſſion and the power of preſent temptation; but it is no relief to thoſe who have ſuffered by their crimes, nor does it prevent thoſe crimes in others. Mankind are no otherwiſe maſters of their actions than in the degree of liberty they exerciſe over themſelves, and as this liberty makes them independent of the Creator and original cauſe of all things; no action is criminal in them but as it is the effect of a criminal cauſe, or principle, in their mind; it may be objected, that if voluntary actions be ſubject to the ſame laws of neceſſity with the operations of matter, it would be making a continued chain of neceſſary cauſes, down from the original cauſe of all things to every diſtinct volition of every human being:

but

but an objection of this kind would be nugatory.—The Deity, in himſelf all wiſe and perfect, is not anſwerable for the artificial evil produced by the abuſe of man's liberty, nor is there any connexion between that abuſe and him. It is the property of man, who is the ſole cauſe, and man alone is anſwerable to himſelf and man for it. This is all we know of voluntary actions, which are the effects of neceſſitous principles in the mind, and we are in fact no otherwiſe maſters of our actions than according to the influence which external objects may create in our minds to commit them, and with which the Deity has no particular concern; from whence we may infer, that as crimes are conſtituted without determining whether they are proofs of criminal principles in the mind, and more from the reſulting injury, clemency is every way defendable to counteract the ſeverity of puniſhment: for as it is admitted that happineſs is the purſuit of all men, they cannot be ſaid to purſue their miſery in any action which may produce it contrary to their inclination by being criminal. No man pronounces an action wrong, though committed by himſelf, until he feels the miſery of it, and when it is too late: this eſtabliſhes the doctrine of liberty and neceſſity, leaving to man a proper ſelf-determination, which implies that the Deity cannot foreknow its object from its contingency; yet ſeeing clearly that the general happineſs of mankind requires a reſtrictive hand to repreſs the furious effects of vicious principles, puniſhments are not altogether to be diſpenſed with in ſociety, under any government, ſince it ſeems impoſſible, among the nations of the earth, ſo to eſtabliſh a pure republic, wherein each are alike poſſeſſed of knowledge, virtue and goodneſs;

neſs; ſtill, as it is wholly impoſſible to alter mankind, or correct their eſtabliſhed evil, no puniſhments ſhould be inflicted but what would tend moſt, from their certainty and utility, to promote the end in view.

Is it not murder (aſks the humane, the tender Beccaria) that, in order to prevent murder, death is inflicted on a murderer?—If he had aſked this queſtion by a robber, he muſt have been anſwered in the affirmative, becauſe death is not warranted for inferior crimes, except, as he ſays, by the iron ſceptre that rules the univerſe. In the caſe of murder the ſtate loſes two members for the ſake of a third and fourth member. To put a man to death is to afford him a poignant puniſhment, but it is tranſient, ſhort, and inſtantaneous; inflicted for the ſake of the public, and as a preventive againſt future murder.—The wife, for example, of an affectionate huſband, is murdered; his wrath and indignation inſtantly kindle againſt the murderer; he glories, in the moments of his rage, at the death of the criminal; but this *neither reſtores his loſt partner, nor wipes away the guilt of her ſlayer:* he is wretched; he grieves for the *fate* of the one, and pities the death of the other; why? but becauſe, *nor his reſentment to the latter, nor ſorrow over the former, can call either into being.* Give me my affectionate wife, ſays he, and let the criminal who *intended* to kill her live. This may be his tone, yet the law, if his beheſt be gratified, takes its courſe and puniſhes the criminal in death, to preſerve the life of others. How violent are the exclamations againſt a murderer we do not know, for the ſlaughter of our friend! We glory in his death *unthinking of the effect* intended by the law; his

his puniſhment ſeems a gratification inſtead of a prevention, and we rejoice in it without lamenting the loſs of the perſon on whoſe account it is inflicted. Thus the *public puniſh*, more to prevent its future loſs in the ſlaughter of a member, than out of *reſentment for the preſent*.

Beccaria ſays, that the puniſhment of death is not authorized by any right, and that as a man has *no* right to kill himſelf, (meaning only *no ſocial right)* he cannot transfer to others what he has not in himſelf.—In this he may be civilly right, but conſidering that revelation goes further, and abſolutely points out death as a puniſhment of murder, his *own conſent gives way to the divine law*, and that though *ſocially he cannot give to others a power to inflict it, he religiouſly muſt ſubmit to it*; notwithſtanding what Beccaria ſays, (apparently but not really to the contrary) in denying that as ſuicide is forbidden, no man can even for murder authoriſe *another* to do that by him, he muſt not *ſocially or politically do by himſelf*.

Rouſſeau has very properly explained the apparent error of Beccaria in this particular. Every man, ſays he, has *an undoubted right to hazard his life for its preſervation, and that he who would preſerve his life at the expence of others, ought to riſque it for their ſafety when it is neceſſary, as it is to prevent our falling by the hands of aſſaſſins, that we conſent to die, on becoming ſuch ourſelves*. Murder therefore calls for the puniſhment of death in every view of it, not only as a terror to others, but to deſtroy the murderer. It is impoſſible, however uſeful he may be made to the ſtate, that *his life can compenſate for the loſs of a member*, the human heart deteſting the act of murder, he would be

be a living object of horror to himſelf and others. Death therefore is a charitable puniſhment, and prevents at once all future torments of the murderer.

But Rouſſeau goes too far, in ſaying that every malefactor in breaking the laws of his country is a *rebel and traitor*, and that in quality of an enemy he ſhould be ſeparated from the ſtate *by death*. Monteſquieu only ſays, that a man deſerves death when he has violated the ſecurity of the ſubject, ſo as to deprive or attempt to deprive another man of life; and except in the attempt to murder, he is undoubtedly right *. Every man who breaks the law is a rebel to it, but not a traitor, unleſs his offence ſtrike immediately againſt the ſafety of government, or tend to its diſſolution. Such a man, tho' a criminal, and *quo ad* his crime, a rebel to *a particular law*, is not an *enemy to the ſtate*; he is a citizen, and death as a puniſhment would be wrongfully inflicted, even according to Rouſſeau (except for murder). If otherwiſe, every petty offender, every delinquent for the ſmalleſt *infraction of any criminal law*, would be conſtituted a rebel and traitor, contrary to truth and reaſon, moral or political, and he would be put to death for crimes *he had not committed*, meaning the crimes of *rebellion and treaſon*, which are the higheſt offences the law knows; and men who commit them breaking thereby the ſocial union, ſo far as relates to themſelves, and aiming at the deſtruction of it relating to *others*, forfeit all benefits they were entitled to from it. Their life, liberty and property being ſupported, derived

* V. I. p. 274.

from, and protected by it, they exclude themſelves from it, and are cut off, under the idea that their future exiſtence would further endanger the community, and be injurious to its members: but the ſame reaſon does not prevail in regard to other offences, committed among men in their civil concerns; the public are affected by them, but the ſtate not being endangered, as in the caſe of treaſon, the puniſhment is and ſhould be inferior. Death is inflicted alike, tho' the mode differs, and forfeiture and the corruption of blood is a puniſhment on the innocent for the deeds of the guilty, juſtified on the principle, that as every thing is held as a feud of the ſovereign or ſupremacy, the holder and his blood ceaſe to have a right to it the moment they commit and are convicted of treaſon and rebellion, by offending againſt the ſovereign, and ſupreme welfare and ſecurity; and this as a terror to prevent rebellion and treaſon, which perhaps would be more effectually prevented by the perpetual exile of the traitor, with forfeiture, without putting him *to death at all*; for as the terror, not the puniſhment, is the object, ſlavery or baniſhment muſt make a more laſting impreſſion, than death, which is momentary; hence forfeiture, during the life of the criminal, would be an ample compenſation to the ſtate for the injury *intended it*.

The puniſhment of *death*, which mankind conſented to or hazarded for the ſake of *life*, and which is only in danger *by murder*, can extend to no other act, becauſe *their lives is concerned in no other*. Robbery, forgery, or burglary, affect not our *exiſtence*, but our *property*, the

the value of which, be it what it may, is not equal to *life* in the criminal, which, as he cannot conſent to diſpoſe of for the ſake of preſerving it, *where it is not concerned*, ſhould not be taken from him. Corporal correction, forfeiture and impriſonment, may work a compenſation to the ſtate for his crime, but death will neither repair or prevent it; and it would deprive ſociety of the benefit of the criminal's labour, which made Voltaire obſerve, "that a man after he is hanged is good for nothing;" that puniſhments invented for the good of ſociety, ought to be uſeful to ſociety; and that hanging a man is a benefit to nobody but the executioner. Slavery or tranſportation tends to make men ſenſible of their crimes, while it holds out an exemplary terror to others; and by employing them, you make them uſeful, until employment growing habitual to them, it works their reformation. We have inſtances of it in our colonies, and other parts. The condemned, ſays Mr. Voltaire, are forced to continual labour for a livelihood; the opportunities of vice are wanting; they marry and multiply; oblige men to work, and you certainly make them honeſt. It is well known that atrocious crimes are not committed in the country, unleſs when there is too much holiday, and too much idleneſs and debauchery *; add to this, that the *condemned are generally thoſe that know the leaſt, have been worſe educated, are the leaſt ſenſible of ſocial right and wrong, have no*

 ſentiment,

* During the *inter regnum* of a Pope, the laws are ſuſpended for a time, and the people commit outrages; but this is the effect of idleneſs and holiday making, not the mere ſuſpenſion of the laws.

ſentiment, no taſte, and are incapable of knowing their own good, or the good of others; and it will be extraordinary if they be not conſidered as ſtrong inſtances of human weakneſs, for which they are not anſwerable, and as ſuch be thought *undeſerving of death*; not only as a cruelty, but as an injury to the ſtate, they have offended, by preventing their making it every poſſible reparation in their labour.

Slavery is often mentioned with deteſtation by a freeman, as a ſcandal to his country; but it is becauſe he does not underſtand the effect intended by it, as a conſequence of ſome crime committed. Altho' a man by breaking a criminal law, does not become a *rebel and traitor*, he nevertheleſs, by breaking the public peace, and injuring the community in injuring any of its members, forfeits the protection of that community, and having expelled himſelf from it, ceaſes to be entitled to its favours or advantages; he therefore has no reaſon in ſlavery, which is impoſed upon him in preference of death, to complain, or any one for him, that his puniſhment is a diſgrace to the freedom of his country: if death were not ſo, humanity would prevail in favour of the one, and the other never be practiſed, but in the caſe of murder.

The late Sir William Blackſtone ſays, he would not be underſtood to deny the right of the legiſlature in any country, to enforce its own laws by the death of the tranſgreſſor, tho' perſons of ſome abilities have doubted it; meaning, that he ſuppoſes *that* right to be founded on the general will, *without conſidering the right of the general will to confer it on the ſovereign*,

ſovereign, who having it, enquires not how juſtly, but exerts it for a ſuppoſed good, leaving it to the laws to decide, whether death ſhall be inflicted for this or that tranſgreſſion. But were the Sovereign ſenſible that the exertion of a right, not *authorized by a prior right*, or drawing a power from thoſe who have *no right to give it*, and that the exertion of it by death was ill founded, the guilt of blood muſt lie at his door, and not with the ſubjects, who may have ignorantly and blindly conferred a power on him, not inherent in them. There is no juſtification of this but in the concluſion, that as he is *their chief repreſentative*, he only executes their will in *the aggragate*, however unjuſt, according to the duty of his executive office, which he is ſworn duly to obſerve. If Sir William Blackſtone conſidered that the legiſlature reſolved and carried their own will into execution, *as the will of the whole community*, it may be called *a ſuicide of all, for the ſake of all*; or a power to *kill all, in order to preſerve all*; with this exception, according to Rouſſeau, that every man who plunges from the top of a houſe on fire, does it for his ſafety, not deſtruction, which he endeavours to avoid; or juſt as it is with every man who embarks in a ſhip, ſenſible of the poſſibility of a wreck, which he hopes to eſcape. But all this applies only to the caſe of murder; the *preſervation of life*, makes it right *to hazard life for it*; it is otherwiſe with property, which if hazarded to preſerve it, as *life for life*, would be equally ſecure, and being invaded or loſt, may poſſibly be reſtored ſpecifically, or in va-

lue; if not, the *death of the robber reſtores not the loſs of the party robbed.*

When we look into the Engliſh criminal code, it is painful to obſerve the long liſt of actions which are made capital felonies, and puniſhable by death; an extraordinary ſtride this towards extirpating mankind, but not to amend them, looking more like a thirſt for the glory of puniſhment, than a means of prevention. So dreadful a catalogue, ſays Blackſtone, inſtead of diminiſhing, encreaſes the number of offences; the ſeverity of it inclines the injured not to proſecute, but ſuffer the criminal to go free, and by impunity be encouraged to repeat his crime; whereas were it otherwiſe, puniſhment would be proportioned to the offence, and might correct the offender by making him uſeful; the proſecutor would then be vigilant, juries would be rigorous, and criminals meet the rewards of their iniquity with certainty and advantage.

If a *man may kill himſelf for the good of his parents, his King, or his country, he may do it for his own*, which is the only object, when he conſents that another ſhall do it by him on *certain conditions*. In one inſtance he conſents to it, that it may *not be done*; or doing it *by another*, it ſhall be done *by him*. In the other, when it is not *worth preſerving*, but being a burthen, he does *no more than that by his own hands, which, deſerving by his conſent on a breach of the conditions of ſociety, will be impoſed on him by another* *. It is

* Monteſquieu ſays, that ſuicide was the effect of education among the Romans; of a diſtemper among the Engliſh, who deſtroy themſelves in the boſom of happineſs, p. 341, v. 1.

is to be remembered, that this is to be done for his *own good*; but except in the caſe of murder, it would be *an evil*, for there cannot poſſibly be any good in the puniſhment of death for inferior actions, except to preſerve *a ſtate from diſſolution, a prince from falling into the hands of an enemy, or a family from deſtruction.* All mankind, as Mr. Voltaire ſays, being expoſed to the attempts of violence or perfidy, deteſt the crimes of which they may poſſibly be the victims; yet there is a compaſſion in the human heart, which makes them at the ſame time deteſt the cruelty of puniſhment; becauſe ſenſible of the poſſibility, from the infirmity of human nature, that they may offend, and form a part of the guilty, they feel for themſelves in feeling for others, and regret that as they may be influenced by a like determination of mind to commit criminal actions, they will be puniſhed for effects not in their power to reſtrain.

Suicide, or the calm renunciation of exiſtance, when weariſome and painful, cannot be puniſhed by human laws at all; the dead are out of the reach of puniſhment, and to confiſcate the property of a ſuicide, is to puniſh his family and aggravate their ſorrow. This may be urged as a terror to others, but the puniſhment of the innocent can never operate as a terror to prevent ſuicide, which, when a man has reſolved on, he will commit, in ſpite of every thing; his family are no part of his conſideration, and his mind is wholly occupied for the purpoſe of his diſſolution; to effect which cannot be a crime, becauſe it cannot be puniſhed or prevented. It is committed for the good of the party, in the ſame manner

as he confers the power on the ſovereignty to take away his life for the ſake of preſerving it as a contrary good, on condition that it be done whenever he affects by homicide the good of others.

Suicide being an act ſubject to thoſe general and immutable laws by which all bodies are governed, can in no ſenſe be a tranſgreſſion of a man's duty towards God, who governs the natural world; and as every event is the act of the Omnipotent, ſuicide is the neceſſary reſult of the faculties with which man is endowed. They are not leſs the work of God than matter and motion; and the employment of them to the end of ſelf deſtruction, cannot be blamed, without arraigning the wiſdom of Providence, which directs all things right, and conſtitutes ſuicide as much the act of the Deity, as if the ſelf deſtroyer had died by a fever. It is irreproachable, becauſe providential, and man being led to it by the faculties of nature, it muſt be proper in reſpect to the Almighty, and committed by his creature to eſcape miſfortune, independent of his peculiar will to diſpoſe of his creature's life, the determination whereof, like every other event, is ſubordinate to thoſe laws by which the univerſe is and has been governed from the beginning of time. Society nevertheleſs have deemed ſuicide criminal, with a view to prevent it, for the benefit of the public, who are ſuppoſed to be injured by the loſs of a member, unſentenced to death by the laws for previous offences; but no human law can prevent an act not criminal in its conſequences, nor conſtrained by the divine pleaſure. Suicide is leſs injurious to ſociety

than

than a man's retiring from it while he lives, which he has a right to do if he choſe it. If he receive no benefit from ſociety, it has no right to any thing from him. Shall he then be deemed criminal for retiring from life, when it was impoſſible for him to be ſerviceable to himſelf or others? While he remained in it, and enjoyed advantages, he ought to render it every ſervice in his power. But how, when he has withdrawn himſelf from it, either by ſuicide or other retirement, can he be engaged in any thing towards it. He then ceaſes to do it good and to receive its benefits; and as it is natural for him to ſeek his own good in preference, he then alſo ceaſes to merit praiſe or cenſure; and is juſtified by nature in ſeeking a voluntary death, or a retired life; in either of which he cannot reaſonably be ſaid to offend his Maker, or civil ſociety.

We have ſeen that in the caſe of ſuicide, it is committed in ſubjection to the general and immutable laws by which the world is governed, and for the good of the party who is relieved by it, as it is for the good of thoſe who wiſh to continue life, that ſociety puts an individual to death for murder. Yet as that good is not ſo highly concerned in any other crime, and as ſociety is a compound of many compacted perſons, it cannot authorize the inflicting death on the ſame principle of acting in obedience to thoſe general and immutable laws which govern the world; becauſe tho' ſociety is a part of it, its laws are ſecondary, local, and particular. It cannot be compared to an individual, to the end of putting its members to death by the hands of the magiſtrate,

giſtrate, becauſe he may commit it on himſelf in the abſtract. He flies from life to avoid miſery and wretchedneſs. He might have done good in it, but dragged on a life of woe, owing to ſome incurable infirmity of body. Yet he never perhaps did it any injury. Society therefore may lament his loſs, but it is abſurd to deem him criminal for an act which nature and reaſon jointly warrants. On the contrary, ſociety in taking away an individual's life, except for murder, apparently commit homicide with a good intent, inſtead of murder by a malicious one. The human faculties of a legiſlature are diſtinct from thoſe of an individual, which are under the immediate direction of the laws of nature. The legiſlature may exert them in conſigning a member to death for crimes under murder; but they are not leſs under the direction of temporal expediency and human error, than thoſe of an individual are of God and his immutable laws. Man only conſents to death as a puniſhment, on certain conditions preſcribed, which is awarded by the legiſlature; but it is the Almighty that wills and ſuffers him to ſeek it by his own hands. In one caſe his conſent is little more than implied, and he ſubmits to power. In the other, he acts with wiſdom and truth. While every natural event muſt be looked on as the act of the Omnipotent, and the neceſſary reſult of the faculties he has endowed every being with, every moral event muſt in a degree be conſidered as the act of ſociety, and as the neceſſary reſult of the education and government of its members. All events may be right on the principle of neceſſity; but thoſe only will

will be profitable which promote the general happineſs and good of mankind. All animals are left to their own prudence to conduct themſelves, and as far as they can to alter the operations of nature which reſpects them as individuals. Society have but artificial rights, which it only can defend on principles of utility: if it fail in this, it has no right whatever to exert its power in putting malefactors to death, except to preſerve the life of others.

To continue life in thoſe who value it as a pleaſure, is a natural right, and life is properly hazarded in its defence. To preſerve property is a ſocial right. Society, which beſtows it at one time, may beſtow it at another; it is fluctuating and dependant on moral accidents; the loſs of it affects not nature, and life cannot be hazarded in its defence, becauſe however arbitrarily valuable it may be, the right to it is not a natural but a civil one.

If happineſs be the purſuit of all men, they regulate their conduct by the impreſſions they feel, and not by thoſe they apprehend. Puniſhment and impunity are two extremes of ſeverity; the one takes place of the other, becauſe it fails in its purpoſe, and by becoming hideous, creates contempt for it; until ſet at defiance, impunity is preferred to it. Thus Beccaria ſays, if the laws be too cruel, they muſt be altered, or anarchy and impunity will ſucceed.

The puniſhment of death defeating its own ends (except in the caſe of murder) is unneceſſary: the prevention of crimes depends on puniſhment leſs ſevere, but more laſting, leſs cruel and deſtructive, but more profitable. If

by

by the pain of ſlavery, a terror is created, and others ſee that no temporary and fleeting benefit ariſing from the commiſſion of any crime below murder, is equal to the ſlow and laſting progreſs of labour and impriſonment, *that* crime will of courſe be ſtudied to be avoided, becauſe the conſequence of committing it is inadequate and too tormenting, tho' diſtant, to the preſent profit of committing it; for the inducement being nothing in compariſon to the puniſhment, the dread or recollection of it will tend to deſtroy it in the mind, when perhaps the idea of death from its frequency, may be likened to the momentary intoxication of drunkenneſs, and deſpiſed not only for the ſake of the profit in view, but becauſe the want of it, and other circumſtances, may have robbed life of all its ſweets, and made death deſirable. Since actions are only criminal as they involve mankind in miſery or danger, and if bad, they are no more their own than if good, but all in general are the certain and invariable effects of either a good or bad determination in the mind, which influences and directs it to the one or the other, how neceſſary is it that no puniſhment ſhould be inflicted on them but with the utmoſt caution, mildneſs, compaſſion, and humanity; and none but what tends to their reformation and utility? To which important ends knowledge, judgment, a love of induſtry, education and taſte muſt prevail, or all the conſequences of the reverſe will be morally and ſocially injurious, by the barbariſm of thoſe who are deſtitute of them. The ſcriptures juſtly ſay, where much is given, much is required; but to expect induſtry, virtue, and ſocial juſtice from

thoſe who have never been trained to either, is a contradiction; it is requiring that from them which they do not poſſeſs, or having ever poſſeſſed it, they are abandoned to the contrary by habit and example, or a neglect of the means of their happineſs, with the caſual impoſitions and frauds experienced in their ſocial concerns.

The ingenuous Helvetius is of opinion, that all men are alike, and that their virtues and vices ariſe from worldly motives. In ſome characters, nature ſeems to have done every thing herſelf; in others, to have left all to education, and therefore ſhe cannot have made men all alike. According to Helvetius, we ſhould have no fools but from the neglect of education; altho' the better opinion is, that there are fools whom no education can ever make ſenſible men. Yet contending againſt innate ideas, he infers that men are all alike by nature; otherwiſe, and admitting the doctrine of innate ideas, their difference would depend on the different quantity of them with which men are originally endued. On a phyſical principle the miſtake is obvious, and nature has not given all men the ſame capacities for intellectual improvement; altho' the capacities of men of ſound mind are not ſo different as ſome would have them. It may be ſuppoſed in favour of this difference of capacities, that it proceeds from a difference of the materials with which man is compounded, varying not in their eſſence, but according to climate, time and place. But admitting there is this difference of capacity, which nothing can change, education may ſurely improve it. Our actions may be the ſame, while our capacities differ; and we are not all alike by nature,

nature, excepting the means we are endowed with by our Maker for the furtherance of our happineſs. Now the queſtion occurs (ſeeing that men are different in capacity, tho' their actions may be the ſame as the effects of habitual cauſes, ſubſervient to the manners and cuſtoms of particular governments) is man by nature good or evil? If neither, but only one or the other according to worldly motives, as conſtituted ſuch by moral convenience or inconvenience, he can only be formed with a diſpoſition for either. If to be good is to be happy, man is good by nature, and as ſuch he glorifies his Maker, to whom is attributed infinite wiſdom and perfection. It would derogate from the character of the Deity to ſay, he has formed an evil being; or an intelligent being diſpoſed indifferently to either good or evil, becauſe however ſtrong man's habits may be in favour of vice, which from his moral ſenſe (and a moral ſenſe he certainly feels) he commits, he never approves it. His diſpoſition therefore towards it cannot be natural, he having no ſenſe of it but from worldly motives, which in his infancy he is incapable of diſtinguiſhing. To be happy then is to be good, and nature diſpoſes man to be ſo; nothing but man diſpoſing him for evil, for which he always puniſhes himſelf, independant of every preſcriptive puniſhment on earth. To be ſecured in our happineſs, all governments and public inſtitutions were eſtabliſhed, which are more or leſs virtuous and honourable, as they encourage the virtue and happineſs of the governed. If men are miſerable under any, and do violence to their conſcience for the ſake of its falſe honours or rewards,

there

there muſt be a ſtandard in nature to which we refer for virtue and vice; and man is not ſo indifferently formed as to either, as Helvetius would have it. Thoſe who favour the contrary opinion, and think that all men are alike by nature, and that the difference of their actions ariſes from education, are advocates for vice, and have nothing to refer to but the varying manners, cuſtoms, and governments of the world; under which, if men perform their conditions, and arrive at their honours or rewards, they are ſaid to be virtuous. But no good or well formed mind can be virtuous, but upon that principle of nature which is perfect, and which will give it internal ſatisfaction, in ſpite of any government, except what comes the neareſt to truth and perfection. Hence men ſhould not be educated in the method appointed by any government, but in the ſolid principles of virtue, and in the knowledge of the conſtitution of the ſtate, of which they are members. If the latter are good, they will approve and obey them; if not, they will ſeek enjoyments in the abſtract; or by declining to influence what they cannot adopt; or improve what they cannot applaud, continue to mix with more obedient members, and make the beſt of what they cannot alter.

To perfect the ſyſtem of education, ſays Beccaria, is the moſt certain method to prevent crimes. By teaching and convincing men that it is their intereſt to be good, in which they are encouraged by their very nature, and their miſery to be bad, their ſentiments are led and excited to the former by pleaſure, not command; by a view of advantage, not authority, and

and they will abhor the latter as pernicious to themſelves and others, without the fear of puniſhment, which procures but a feigned obedience to things impoſed by power, unleſs thoſe things be founded on natural rights.

The neceſſities of mankind encreaſed with their number, and ſtronger impreſſions in proportion to their encreaſe, are neceſſary to prevent their frequent relapſes in a ſtate of barbariſm, which is proportionably fatal. It is the intereſt of a well governed ſtate, that they ſhould not be their own judges, as in a ſtate of nature, which muſt be guarded againſt by all poſſible means, until that civil ſtate, by the exertion of a fraudulent force, collected deceitfully from the community, ſhall, by attempting to make it ſubſervient to its own tyrannical purpoſes, neceſſarily and virtuouſly call forth reſiſtance, and juſtify by every means its certain deſtruction.

The ignorant and vulgar are, from the nature of their condition, prone to relapſes of this ſort. There are laws for the civil magiſtrate to enforce and execute againſt the idle and vagrant, but they are evaded or overlooked; either becauſe thoſe men to whoſe immediate care they are committed, have an intereſt at conniving at their violation; or becauſe, from a fallacious ſenſe of pity and oſtentation, they encourage by their ſilence the indolence of the wanderer, who, grown a ſlave to his diſorderly and evil habits, prefers his ſtrolling vaſſalage to a uſeful employment of his induſtry, or a parochial proviſion and ſequeſtration. Were it otherwiſe, and a due watch were kept on the idle, they would not be ſuffered

fered to ſtudy means of plundering or injuring the induſtrious, fewer crimes would be committed, the triumphs of Tyburn would leſſen, and the trophies of induſtry encreaſe; the idle would ceaſe to be doubly criminal; firſt, in not indulging their indolence to the detriment of the community, which has a right to the utmoſt aſſiſtance every member of it can give; ſecondly, by not living on the induſtry of others: men, however badly inclined, would become uſeful, and being ſo, they would in time forget that they ever felt the influence of evil, and dread it in future.

Idleneſs is the root of all evil, and properly puniſhable by corporal correction and conſtrained labour. No citizen has a right to be idle; he takes from the general ſtock, but contributes nothing to it; gliding by degrees into vice, he becomes a nuiſance to that ſociety, of which, while a member, he receives the benefits, tho' he withholds his duty from it, as if ſociety was made for him, not he for ſociety; the citizen is but a mock character with him, and from properly and worthily a *ſocial* being, he converts himſelf into a ſavage and ſolitary freebooter.

Irreligion may be called another cauſe of moral evil in weak or vitiated minds: Beccaria ſays, the greateſt benefactors to humanity were thoſe who dared to *deceive and lead pliant ignorance to the foot of the altar*; where being impreſſed by the diſtant hope of eternal rewards, or the fear of puniſhments, it is harmonized, and practices virtue mechanically, not out of regard to her naturally amiable ſelf, or any internal conviction of divine or univerſal juſtice,

which is altogether immaterial to the ſtate, but the dread of eternal torments; for, as Voltaire ſays, if in acts of impiety the delinquent has not committed a robbery, or violated any poſitive law, the ſtate will not puniſh the impious as being merely ſuch, but will encourage the pious for the ſake of morality, without concerning itſelf at all about the ſincerity or hypocriſy of their piety. Religion therefore is morally uſeful, and as ſuch neceſſary; it kirbs its votaries, and ſoftens their judgment; and by influencing their will towards good actions, it makes conſtituted bad one's horrible; and thus educating them in moral virtue, it leſſens the number of criminals, who, ignorant of the pleaſure of doing good without the hope of eternal rewards, avoid committing crimes thro' fear of eternal puniſhment; while the precepts and prohibitions of the ſtate not being taught or underſtood, do but call culprits to the bar, and puniſh them unprofitably. Induſtry and religion make good citizens, however weak or hypocritical, when idleneſs and profligacy will multiply criminals; let therefore the civil magiſtrate watch with care over the actions of men; let the idle be corrected and employed; impreſs their minds with a lively hope of eternal rewards in *a world to come*, as well as in the fleeting and conſcious rewards of the preſent, and with an *abhorrent terror of eternal puniſhments hereafter*, as well as miſery here, making all allowances for human frailty; never puniſh but with a view to amendment or reparation, and even the incorrigible offender

offender may be made ſerviceable *. But death, as it aſſumes the office of nature, which calls for it by the hands of man *only* in the caſe of murder, and of himſelf in the caſe of miſery, while it ſtamps indelible infamy, ignorance and diſgrace on the ſovereignty that ordains, and

* To the honour of the late Blackſtone, whoſe active mind was ever employed in virtue, humanity, and public good, an act of parliament was planned by him for providing detached houſes of hard labour for convicts, as a ſubſtitute for tranſportation. He was moved to a conſideration of ſuch an act in the belief, that it would be more beneficial to the criminal and the community, than ſeverity of puniſhment, as very elegantly appears from part of his charge to a county grand jury on the occaſion, as follows:

"In theſe houſes (ſaid he) the convicts are to be ſepa-
"rately confined during the intervals of their labour, de-
"barred of all incentives to debauchery, inſtructed in re-
"ligion and morality, and forced to work for the benefit of
"the public. Imagination cannot figure to itſelf a ſpecies
"of puniſhment in which terror, benevolence and refor-
"mation are more happily blended together. What can
"be more dreadful to the riotous, the libertine, the vo-
"luptuous, the idle delinquent, than ſolitude, confine-
"ment, ſobriety, and conſtant labour? Yet what can be
"more truly beneficial? Solitude will awaken reflection;
"confinement will baniſh temptation; ſobriety will reſtore
"vigour; and labour will beget a habit of honeſt induſtry;
"while the aid of a religious inſtructor may implant new
"principles in his heart, and when the date of his puniſh-
"ment is expired, will conduce to both his temporal and
"eternal welfare. Such a proſpect as this, is ſurely well
"worth the trouble of an experiment."

It moſt certainly is, and promiſes every advantage in practice, it calculates in theory. Should it prove beneficial the next ſtep to reformation ought to be, the repeal of all capital felonies, except murder; for as at all events criminals will for ever ariſe among us, from the inequality of our community, and the defects of our government, it is the intereſt of both to make them publicly uſeful, in return for the injuries they have done, and that in a manner which tends to their future amendment.

the power that executes it, teſtifies its own de-deliberate cruelty; and with thoſe who have ſtudied hiſtory and mankind, neither produces the good intended, nor leſſens the quantity of crimes; for in proportion to its cruelty, tho' momentary, the guilty often go unpuniſhed: the certainty of a ſmall puniſhment makes a deeper impreſſion, and from its *continuance*, holds out a ſuperior terror to others, than the black, the diſmal, and vindictive puniſhment of death.

It is true that we cannot preciſely aſcertain the fact, nor decide altogether whether death be the terror the law imagines, or whether without it, and with inferior puniſhments, crimes would be no more in number, than have been experienced in contempt of it; yet if from reaſon and analogy we are authorized to infer, that many crimes eſcape conviction from the *ſeverity of death*, and that they would not be committed were the puniſhment milder, it ſufficiently anſwers the preſent purpoſe, and evidencing a tendency in favour of the laſt, it ought in honour to national juſtice, to human nature, and in compaſſion to its infirmities, for which man is not naturally anſwerable, to be readily and chearfully preferred to the firſt: death would not then blacken the long liſt of criminal offences under murder, but would only be inflicted in the caſe of life, where on the loſs of it, the rigid ſatisfaction would of right be made in death for death.

CHAP

CHAP. IV.

Of criminal Actions.

WE have conſidered wilful and deliberate murder * as juſtly puniſhable with inſtant death, on a careful conviction both by the authority of holy writ, and the prudence of man. It is our buſineſs now to take a view of

* Altho' murder is prohibited by the pentateuch, and puniſhed with death, it is a puniſhment that was not always practiſed in England. Murder and manſlaughter were formerly puniſhed alike, and were clergyable; ſo that *none*, ſays Blackſtone, *but unlearned perſons, who leaſt knew the guilt of murder, were put to death for it.*

We may obſerve that in the laws of Alfred, a greater regard was had of life than thoſe of later ages, which for a remedy of ſmaller offences have too ready a recourſe to blood. The ſevereſt puniſhments of the former were the cutting out the tongue for falſe and ſeditious ſpeeches, the loſs of the hand for ſacrilege, life for the attempts of treaſon which might be commuted. The perſon of every one, from the King to the bondman, and every limb and member of every perſon, was valued at a certain eſtimation. Whoever killed a man, was obliged to make recompence, according to the value of the killed, which was called weregeld; one part of which was payable to the King, called frithbote, for the breach of his peace, and the loſs of a ſubject; another to the Lord, for the loſs of his man, called manbote; the laſt to the relations of the perſon killed, called magbote. If theſe were not paid, the life of the delinquent was expoſed to the kinſmen of the deceaſed, as to the avengers of blood, according to the law of Moſes, &c.

ſuch other acts, as ſubject the agent to ſo high a penalty, and by exploring them with the eye of philoſophy, determine on the propriety of their puniſhment.

And firſt OF A RAPE; or the carnal knowledge of a woman without her conſent.

In treating of this crime, it is proper to go before the reader by obſerving, that the remarks upon it are intended only as a defence againſt the rigour of the law, under which it is puniſhed; they conſider the fact after it is committed, but by no means attempt to prove that it ſhould paſs with impunity, when ſufficient evidence is adduced to conſtitute the reality of the guilt, which is indiſpenſably neceſſary in every criminal tranſaction, before any puniſhment be deviſed or impoſed by way of prevention.

Altho' the commiſſion of a rape was puniſhable among the Jews, according to ſcripture, with death, in caſe at the time of committing it the woman was betrothed to another man; or if not, then by fine of fifty ſkekles, to be paid to her father, and ſhe was to be the wife of her raviſher all the days of his life, without divorce; there are many reaſons why a man who commits a rape ſhould not be put to death.

A raviſher is not that horrible creature as is a murderer; he neither killed, nor intended to kill: his crime proceeded not from hatred or revenge, but the agonies of luſt or concupicence; in one, nature is diſtorted: in the other, ſhe is only animated; tortured in the will and thirſt of blood, by the one; fired and excited by the object, who is ſuppoſed to be offended, by the other; both are inevitable; but

but *that* ſeeks enjoyment in death, *this* in the vigour of life; deſire kindled in each the will to ſlay or enjoy, will be obeyed; it is above terror, and nothing but fetters or ſuperior force can repel its being fulfilled. Is death then neceſſary for what nature enforces in her important operations? Can man conſent to the loſs of life as a puniſhment for his preſervation, where it is not concerned? Shall death be arbitrarily impoſed for actions, whoſe only guilt is their being natural? Or ſhall men looſe their lives for the licentiouſneſs of paſſions they cannot controul, but whoſe indulgence nature commands as a pleaſure, while reaſon, unlike the forbearance of other acts, vainly echos a retreat and parley as a pain? Death is nevertheleſs the puniſhment annexed to the commiſſion of a rape, by which, (for it is inflicted on a firſt offence,) there is no poſſibility of amendment, and all advantages are loſſed by the death of this *natural* criminal. In the caſe of murder, to conſtitute the guilt, the fact muſt be deliberate, intentional, and malicious: if from ſudden paſſion or violent provocation, where no evidence ariſes of a reflection to kill, it is *not* murder, but manſlaughter, and not puniſhable by death; yet do we puniſh with loſs of life, in a caſe where life is not deſtroyed, an act ſpringing from unmalicious paſſion, and unlikely to be ſubdued by the interpoſition of reflection, becauſe it has no influence, and is ſeldom or never at hand. One would imagine that puniſhment for a rape is a real gratification; were it meant as a terror, a firſt offence would be diſtinguiſhed from a ſecond; an inferior puniſhment be inflicted, and

the criminal rendered uſeful. But the defenders of ſevere puniſhments pretend, that the injury in this caſe cannot be repaired; the honour, the virtue of the woman, they ſay, are for ever loſt; theſe were her life, and loſing them by the hands of her raviſher, ſhe ever after drags on her exiſtance as a living death, avoided by the lovers of virgin purity, a ſtain to herſelf, pitied for her misfortune, and loathed for her contamination! Here impatient reaſon calls on truth and native wiſdom to aſſiſt her, and ſtop the torrent of ignorance and folly. In thus deſcribing the injury, they forget the cauſe, and ſpeak of the effects of weak and prejudiced judgments. Can the property of virginity be more injured than any other; and is it ineſtimable as life? or, like the loſs of exiſtance, is that injury magnified on account of ſurviving it? Vain reaſoners! Let forfeiture, impriſonment, and labour, be the puniſhment, if any be neceſſary to reſtrain external and more than brutal violence. The woman ſuffering under ſuch an act, if wiſe, will prefer her ſilence to revenge; ſhe will, if ſhe ſee the conſequences of making it public, let her offender go free; ſhe will forgive him for a violence which her endearments alone excited; and pity herſelf and him, in lamenting that they ever met; ſhe will conceal it for the ſake of her *future character, welfare, and happineſs*, and never think of ſacrificing theſe, by proſecuting her raviſher to conviction and death! Horrid thought indeed in a tender mind, and ſuggeſted only in the brain of thoſe, who forgetting themſelves, or being below the injurious effects premiſed, reſolve, thro' intereſt or diſappointment, to purſue

ſue it, even to the deſtruction of a fellow creature, which neither cleanſes him of his *imputed* guilt, repairs the *imagined* injury, or *terrifies* others from following his example, under the ſame circumſtances, and committing a rape; particularly when, as in him, *deſire is whetted, importunity fails, paſſion encreaſes, opportunity is favourable*, and *natural* force is employed to procure the certain effects of a certain cauſe in an ardent and outrageous mind. His purpoſe gratified, compunction is ſilent; no horrors torment him, becauſe he is ſenſible of no crime; paſſion abated, reaſon ſteps in; but laments, and not condemns, that he obtained by force, what would have rendered his joy poignant, in proportion to a mutual acquieſcence.

What are the raviſhed woman's feelings? Reflecting that ſhe was ever in the way of her raviſher, ſhe harrows up the idea of hell itſelf; her virgin flower cropt, while her ſoul ſhrinks back from the polluting hand, ſhe views him with ſcorn, and thinking to avenge the crime, ſhe haſtily, in the expectation of *doing him juſtice, and wiping away her own ſtain*, hunts him into the criminal court, where ſhe glories in his conviction, unmindful at the ſame time that ſhe aggravates her misfortune, in bringing him to a puniſhment, that neither heals her wounded name, nor alters the offence ſhe has received; but on the contrary, opens the wound, which will perpetually bleed, and hold her up a mark of human violence, the victim of unruly paſſion, her own charms, and a poſſible exception to the paſſion of others. Theſe may be the conſequences of a rape, with a woman of ſenſibility, who may be led away by an imprudent

dent and falſe reſentment; but this ſeldom happens, and proſecutions for a rape are generally begun, where the ignorant and vulgar ſeek the enjoyment of women in common and ordinary ſtations at the expence of tenderneſs, and that humanity, which lead refined and gentle lovers to the fane of Venus; theſe do not aim to ſatisfy by force an appetite, which is never highly or exquiſitely ſatisfied but with the willingneſs of conſent. Is it poſſible that a man who leaves a freedom to himſelf, ſhould violently wreſt it from another? It may be ſo in particular caſes, and under certain circumſtances, but ſeldom in the affairs of love: whoever ſtudies this paſſion muſt know, that it delights in mutual liberty; and no man who is a friend to the fair ſex, which has theſe pleaſures to diſpenſe, ever thought of forcing them to a conceſſion of what the one would not in a ſtate of conſtraint be in a capacity to beſtow, nor the other to receive. Men act in a lordly manner when they obtain their deſires, but are well humbled in the preparatory advance from the delays of female capriciouſneſs, in moments when it can ſo ill be brooked. By following the dictates of nature, they ſometimes overlook the laws of ſociety; this is no more than a deſire of liberty, which however rejects every gratification that does not ariſe from the yielding of compliance: a brutal violence ſeems as great a crime againſt the ſenſations of natural love, as ſociety; and what among gentlemen in this country, the wantonneſs of their moſt vicious imagination is ſcarce every known to produce, becauſe *ſeduction* is a much more effectual weapon than *force*. We know that the paſſion

of

of love is headſtrong, and adds vigour to the body; but in the extreme, which exceeds brutality, by taking that with force which is not practiſed among brutes, it only ſhews itſelf in common people, who ſeize on the laſt plunder in their power to make. The affluent, who have riches to beſtow, are never forced by paſſion into violence; they commit no rape, and are never ſubject to its puniſhment in death. The poor, the indigent, and vulgar, whoſe paſſions are ſtrong and leſs limited by debauchery, having neither riches to beſtow, nor that ſuperior ſenſe to know that violence defeats the end of enjoyment, have recourſe to force, as the only ſubſtitute to obtain what probably, with the faſcinating art of addreſs, inſinuation, and money, they might have obtained, without any force at all. In one caſe the fact is a rape; in the other, only fornication: a rape, if the party be poor and ignorant, having neither money to beſtow, nor the power to practice the bewitching artifices of ſeduction; ſimple fornication, if being rich and ſubtle, he ſucceed in his purpoſe. This is to hang a man becauſe he is vulgar, poor, and ignorant, as a terror and preventive to men only like himſelf; and to excuſe him becauſe he is rich, engaging, and ingenious. It is putting one man to death for the artleſs ſincerity of natural paſſion, and excuſing another for his hypocriſy; the poor man ſuffers, the rich one eſcapes: yet if peradventure, the latter fall into the ſame crime, he can ſuffer no more, altho' he had the advantage of riches and ſuperior knowledge. Death, if at all, would be more his due than the former. Seduction is nevertheleſs a crime, when

practiſed

practiſed thro' lucre, not love, and the law properly puniſhes it, if practiſed on a woman under ſixteen by a man above fourteen, without conſent: but the ſeduction mentioned in this place, being the ſeduction of love, where neither force or pecuniary intereſt is concerned, the practiſer or ſeducer ſucceeds, and the act is venial; while he who has not the power of ſeducing, but employs violence inſtead of it, ſhall ſuffer death as a puniſhment. It is the carnal knowledge without conſent, that may or may not be obtained by one and the ſame perſon, according to his riches or perſuaſion; his poverty and violence raiſes the crime, and that man is only unfortunate who wanting wealth and inſinuation, tho' having the rude inſtinctive paſſions of a man, ſuffers death for what he did not poſſeſs, and could not avoid.

But it is not becauſe ſeduction is preferable to force, that it ſhould be altogether defended; it is morally criminal, and often proves more injurious in its effects, than the exertion of violence with which the ſame object of deſire may be procured. To what but ſeduction are we to aſcribe the condition of the many unhappy women who are doomed to ſorrow, ſhame, and repentance; women, who liſtening to the voice of their ſeducers, have relied on man's gratitude to pay them for their peace and honour, ſacrificed to him. Their wretchedneſs excites compaſſion; they carry in their hearts, notwithſtanding they externally ſhine in pleaſure, the ſad teſtimony that nothing can make reparation for their innocence and virtue loſt. Yet for this moral offence of ſeduction, the agent goes unpuniſhed. His deſires gratified, he flies from the injured woman,

woman, who had bleſſed him at the expence of herſelf; abandons her to the ſcorn of her ſex and pity of his own. Puniſhment here operates on the innocent, who giving up all to love and him, ſuffers for what he alone is guilty of. Seduction therefore is morally as well as legally criminal, and entails more laſting miſery on the ſeduced woman, in whom chaſtity was moſt amiable, but worſe fortified, than if ſhe had involuntarily but momentarily been ſubdued by force. Tears and anguiſh perpetually follow the former; revenge and ſudden reſentment againſt the latter will die away, and time eraſe them from the injured mind. Seduction is the effect of reaſon, which is generally perfidious, and never fails to lead nature aſtray. There is no vice in honeſt inſtinct, which is always right.

Then reaſon raiſe o'er inſtinct if you can,
In this 'tis God directs, in that 'tis man.

Again,

Inſtinct ſerves always reaſon never long,
One muſt go right, the other may go wrong.
POPE.

Let us however not be partial, and by commiſerating too much the ſorrow of women, who have fallen victims to the ſolicitation of their ſeducers, forget that men in their turn are not free from the perils of being themſelves ſeduced and impoſed upon.

How dangerous would be the condition of that man, rich and artful as he may be, who prefers the poſſeſſion of beauty at cheaper coſt, to the trouble and expence of maintaining an indolent and vicious wife, were it in the power

power of a woman, accordingly as her caprice may prompt her, to convict him of a rape! The bloom of virginity worn away, or never taſted, but grown antiquated and uncourted, maidens of all ages, under their grand climax, might then have objects to wreak their wrath upon; and thoſe of more tender years, but equally affected, would complain to willing ears, that they had loſt their virginity, chuſing rather to have given way to violence than ſeduction! Yet this has been the condition of all men, when proſecutions for a rape were more abundant and frequent; when the ſuperlative and capital pleaſure of intriguing were indulged with attendant and perjured perils, eſpecially in the caſe of a pious daughter, who, after yielding to the allurements of ſeduction, where vanity influenced her ſubmiſſion, could, on a ſuppoſed remorſe or diſappointment, back her complaint againſt her ſeducer, with a troop of ſectaries at her heels, and gain proſelytes to believe her artful ſtory, which, like religion, the leſs it be capable of demonſtration, the greater will it be an object of faith.

Seduction is odious; violence more than ſavage; but if the perſon ſeduced were on the point of marriage; if the perſon polluted (if nature pollutes) were of ſo firm a virtue, that not even famine could ſubdue it, how much more odious and ſavage! Yet ſeduction does but ſeldom happen. It is not confined to a particular ſex; each are ſeducers, and alternately betray. A woman, by her ſmiles and captivating graces for the ſake of private advantage, independant of the love ſhe inſpires:

a man,

a man, by his artifice and addreſs, his flattery and pride, and all for that, which when enjoyed, he finds ſcarce worth the having! Each are alike impoſtors; the one to enſnare with a deſire to keep; the other to enjoy till enjoyment cloys, and then divide. Seduction is the ſame in both; and as to the crime of it, which is not morally to be defended, it is not in the power of human laws to add an *iota* of guilt, if it be in a caſe that is guiltleſs, and where nature and reaſon excuſe it.

A rape then ſo hard of proof, ſo rarely committed, and in general ſo unworthy belief, was probably puniſhed with death by our anceſtors on conviction, as an action from its improbability that merited the higheſt puniſhment; unthinking that in proportion to the difficulty of offending, the puniſhment ſhould be *ſmall*, and high only from the facility of committing the offence. William the Norman, finding that it had been inflicted as a terror, which in his time appeared too ſevere, and not anſwering its end, ordained what may be thought ſeverer ſtill, tho' leſs ſanguinary, *caſtration, and the loſs of eyes in its ſtead.* This was deviſed as a terror to others, which as it might ſubject them to more than death, might influence their will, and prevent raviſhment. Edward I. however altered this puniſhment; in his time it was properly conſidered only as a treſpaſs, and puniſhable by fine and impriſonment; which continued for ten years, when it was made felony, but clergyable. Queen Elizabeth (a *woman*) unwarrantably made it capital, and ſo it has continued to the preſent time.

The

The law it muſt be allowed is particularly careful of convicting for a rape, and neither judges or juries will condemn a man as a raviſher, but on the cleareſt proof; which being difficult to adduce, is favourable to the delinquent. The credibility of the woman, her general character, her age, her perſon, the competency of her witneſſes, and all the particulars of her caſe, are as much within the province of a jury to find, as the fact itſelf. The judges explain the law leniently, and juries accordingly knowing the nature of the charge, may not believe it in part, or all, as they pleaſe, and acquit him without breach of their oaths; but this is too weak a barrier: juries who may diſcretionally acquit, may convict; the chance is too wavering to ſubject man to the loſs of life; diſcretion is tyranny, and juries being formed of ordinary men, may be inclined to convict for a rape from a prejudiced and falſe idea of it; the puniſhment of death ſhould therefore be obliterated; it ſhould not be in the diſcretionary power of any man or ſet of men, at the inſtance of a wicked or mercenary woman, to convict another of a rape, according to the fluctuating and arbitrary ideas ſtarted in their minds, either from the inconſiſtency of the ſtory, or the fallacy of the guilt; how miſerable muſt the ſituation of that man be, who brought to a criminal bar, ſtanding in chains and arraigned of a rape, is ſuſpended between doubt and fear, that for a crime which nature acquits him of, he is to be tried and determined by the fickle adjudication of twelve men of mean capacities, vulgar ideas, and eventually either prejudiciouſly inclined to pronounce

nounce him guilty, or wiſely give him his liberty. Hence life ought to be ſpared, and an inferior puniſhment ſhould be impoſed, more uſeful, humane, and exemplary; a Rape would not then be thought of, but where the means of ſeduction are wanting, and then only in thoſe rare inſtances where love, like hunger, ſeeks its gratification by force, which cannot be employed ſucceſsfully by man alone, on any ſingle woman. Death ſhould ceaſe to be a puniſhment for little *more than a phantom*, and fine, labour and impriſonment ſuperſede it, as more conducive to the purpoſe of preventing what nature on all ſides promotes, in deſpite of the violence done her by human laws.

CHAP. V.

Of Theft and Robbery.

WE have already quoted the axiom of Mr. Locke, that *where there is no property there can be no injury*; and we have reaſoned on the impropriety of death as a puniſhment in caſes under murder, which as we have a property in life, and it is natural for us to wiſh by all means to preſerve it, is warranted of neceſſity. The property we have in our lives is derived from nature, in which alone we trace our only title to it; all other property is merely human and artificial, deducible from thoſe men, who emerging from their primitive ſtate of ſavage ſociety, boldly pronounced this and that to be mine and thine. Civil ſociety commenced with ſuch deciſion, more calamitous perhaps in all its conſequences than thoſe of our original ſtate of dependant but unrefined nature. From how many crimes, ſays Mr. Rouſſeau, battles and murders, from how many horrors and misfortunes would not that man have ſaved our kind, who ſhould have pulled up the ſtakes or filled up the ditch, crying out to his fellows, "Beware of liſtening to this impoſtor, you are undone if you once forget that the fruits of the earth

earth belong to us all, and that the earth itſelf belongs to nobody."

Yet when man, from a diſcovery of the intimate relation of things, felt the firſt emotion of human pride, he began to reflect on the means of pre-eminence; and by conſidering himſelf as related to his fellows, who he ſuppoſed might be actuated in a like way, he diſcovered a power of diſtinguiſhing caſes in which mutual intereſt might juſtify him for relying upon their aſſiſtance. This joined him in an irregular aſſociation with them, without any reſtraint, which continued with the tranſitory occaſion of it; while otherwiſe, by ſeeking private and independant advantage in force or cunning, each individual found himſelf the weakeſt. From the inequality of ſtrength or art in a ſtate of rude ſociety, men acquired irregular and faint ideas of mutual truſts and engagements, in order that all might be equal by convention and right, when under the eſtabliſhment and diſtinction of families, property was introduced and known; but known only, as Rouſſeau remarks, as the ſource of thouſands of conteſts and quarrels.

Property commencing with a diſtinction of mine and thine, it was neceſſary to preſerve it, and thoſe partial determinations in favour of it, known only in a ſtate of nature, in which each individual was his own umpire, and avenger of what he arbitrarily ſuppoſed an infringement of it, or a wrong, gave way to the umpirage of this new ſtate of civility, which puniſhed treſpaſſes in proportion as the opportunities of treſpaſſing were frequent, and made the dread of law take place of vengeance.

Robbery and theft being the taking and carrying away ſomething by one perſon from another, forcibly and without his conſent, not merely poſſeſſing it (as of land) as a violence to the rights of property, they could only commence or follow the time when the bounds of that property were marked out and eſtabliſhed. How far ſuch offences, ſays Sir William Blackſtone, can exiſt in a ſtate of nature, where all things are held to be common, is a queſtion that may be ſolved with very little difficulty. The diſturbance of any individual in the occupation of what he has ſeized to his preſent uſe, ſeems to be the only offence of this kind incident to ſuch a ſtate. Unqueſtionably in ſocial communities, when property is eſtabliſhed, any violation of that property is ſubject to be puniſhed by the laws of ſociety; but how far that puniſhment ſhould extend is matter of conſiderable doubt. Now it is the occupancy and preſent uſe which conſtitute a natural property; to defend which, men muſt reſort to force, as animals of prey. This condition being too wild to be continued on the encreaſe of our kind, our duty and happineſs combined to render property more fixed by the mutual inſtitutions of civil ſociety, which being alike in favour of all, guarded againſt the encroachments which the nominally unjuſt would be inclined to make upon excluſive rights to particular poſſeſſions, belonging at firſt to every body and nobody, except by occupancy, which gave an original title to the firſt uſer of particular parts, provided he was the firſt occupier, remaining in him until he voluntarily and intentionally deſerted it.

When

When the intereſts of mankind grew complicated, it was found that ſuch tranſitory or uncertain property was inconvenient, and that ſeparate views and purpoſes conſtantly require a change; one man wanting this, another that, which could not be effected but with confuſion, diſorder, and diſſatisfaction; mutual convenience introduced commerce, and the transfer of excluſive property by exchange, barter, or otherwiſe.

Perſonal, diſtinguiſhed from real property, which, tho' infringed, cannot be taken away, being eſtabliſhed excluſively, is certainly no natural, but a civil poſſeſſion; ſubject to transfer by the peculiar laws of ſociety. It belongs either to that ſociety in the aggregate, where a determinate owner is wanting, or to particular members of it, who improve and encreaſe it by their induſtry and ingenuity, according to the quantity of their kind; or decreaſe and deſtroy it, according to their idleneſs and diſſipation, which is voluntary and optional, and produces that inequality of property, which tho' originally equal, has, from the very nature of men and things, long been the reverſe. The treſpaſſing or infringing upon this right to ſocial property, and taking it away, is the crime of robbery and theft; a crime, according to ſcripture and the civil law, puniſhable by fine and ſatisfaction to the party robbed, which continued ſo until the common law inflicted death for it by Stat. Hen. I. if to more than twelvepence * value; a variety of ſtatutes in after

* The difference of the value of money ſince Hen. the Firſt's time, is the reaſon that in indictments for larceny they

reigns, have extended this capital puniſhment to many and particular caſes *. But death, as we have ſaid in the caſe of a rape, is equally unauthorized for theft and robbery; and tho' it has been aſſerted by Puffendorf and others, that the meaſure of puniſhment muſt always be referred to the prudence of the legiſlature, there can be no doubt, as man cannot conſent to the taking away life, but for the preſervation of life, that where the robber on conviction has no property, or it is not ſufficient to compenſate for the loſs of the perſon robbed, with the damages of apprehending and proſecuting him, labour and corporal correction ſhould be the puniſhment; firſt, for the benefit of the party robbed, then the public: ſo hard and ſanguinary is the puniſhment of death, that it ought, even according to Puffendorf and Hale, to be cautiouſly inflicted, and never but from the utmoſt neceſſity: now what neceſſity can there poſſibly be to inflict it in the caſe of theft? A man, ſenſible that for ſtealing any thing above the value of twelve-pence, he is puniſhable with death, ſteals to the utmoſt amount in his power, becauſe the puniſhment is the ſame, and by its magnitude and ſeverity is productive of two conſe-

they rate the value as low as poſſible, in order to make it petty, which is ſubject to inferior puniſhment. Thus a ſword ſtolen, now-a-days valued at a guinea, may, according to the value of it in Henry's time, be worth only twelve-pence, or under, conſequently the thief does not ſuffer capitally.

* There are no leſs than an hundred and ſixty actions which have been declared felonies by law, and which mankind are liable to commit every hour of their lives, and be put to death for. *See Ruffhead's Index to Stat. and Blackſtone's Remarks*, v. 4. p. 18.

conſequences; the one, the encreaſed quantity of the theft; the other, the impunity of the thief, who either eſcapes conviction thro' compaſſion, tho' guilty, or provokes the ſeverity of the puniſhment by the amount of his robbery.

The wiſdom of our common law determined that theft could not be committed of things real, becauſe being fixed and immoveable, they cannot be taken away. It extended ſo far, that theft could not even be committed on things *relating* to the reality, unleſs ſeparated at one time as a treſpaſs, and taken away at another; but ſubſequent ſtatutes have rendered ſuch theft ſingle felony, and where theft is committed in a houſe openly, and without breaking it, the offence is capital; ſo that it is not the theft, but the time and place in which it be committed, that ſubjects a man to impriſonment and death *.

If thoſe who have no perſonal property themſelves, are generally moſt ready to attack the property of others, ſuch a puniſhment ſhould be inflicted as would make the crime of theft moſt dreadful †. Were men made ſenſible of a certain puniſhment by bodily labour, fine, and impriſonment, they would (however inclined to commit it) be more cautious. The robbed, or thoſe who have any thing to loſe, ſhould do all in their power to prevent robbing, and not, by

* See Blackſtone.

† Monteſquieu ſays, the puniſhment of death is the remedy of a ſick ſociety; but that it would be much better and more natural, that crimes committed againſt the ſecurity of property, ſhould be puniſhed with the loſs of property; yet as the poor are generally the readieſt to attack the rich, it has been neceſſary to ſubſtitute a corporal (not ſanguinary) inſtead of a pecuniary puniſhment, p. 274, v. 1.

their negligence, afford a temptation to it: they ſhould not ſolely depend upon the law, but themſelves conjointly; nor leave their property expoſed to theft, becauſe by the laws they may proſecute and puniſh the thief: prevention is as much their duty to ſtudy, by caution and watchfulneſs, as it is the duty of the law; the one tends to preſerve preſent, the other future property. Let thoſe who have any thing to loſe, be as mindful to preſerve it as the laws, and there will be little or no occaſion to enforce it: temptation is the nurſe of crimes; thieves ignorantly imagine, that from the inequality of mankind and their poſſeſſions, they were not born to ſtarve, forgetful that they would not, if they would exert their induſtry, and become honeſt candidates for public encouragement, by the abilities they are endowed with; conſequently they thieve, in the notion that they only take that from others which they can afford to loſe, without conſidering, that in proportion to their wealth is the manner of their living; and their uſe of it, which, tho' it diſtinguiſh their condition, leaves them in truth no richer than other people; or that their wealth is the due of their induſtry and merit, which, tho' ſuperior, equally requires protection againſt the invaſion of others. Wealth and property, by their very nature, are fluctuating, *vix ea noſtra voco*, and cannot poſſibly be perpetuated; the law itſelf abhors the idea of perpetuity; their circulation is indiſpenſably neceſſary in ſociety, and they form a commerce of univerſal and mutual gratification; to break in upon either, interrupts the harmony and health (ſo to ſpeak) of the ſocial body, as bounded and limited by the law. The violator of pri-

vate

vate property may be made uſeful to ſomebody; his uſe (tho' the manner to him would be worſe than death) would deter others; and as property in things of mere ſocial gift is nothing equal to the property of life, the gift of God, the deprivation of it can never merit death; nor can man's conſent be granted for it to, or implied by, the legiſlature, who exceed their duty in the exerciſe of that falſe, unnatural prudence, which leads them to impoſe it.

CHAP.

CHAP. VI.

Of Forgery.

OF a nature with theft and robbery, of which we treated in the laſt chapter, is the offence of Forgery, which may be properly called a kind of thieving, differing only in the mode, whereby it may be perpetrated. Theft and robbery are the taking and carrying away by mere natural power, either publicly or privately, by day or night, from either houſe or other place, the excluſive perſonal property of others, as the legal owners, contrary to their will expreſſed or implied, which, altho' originally a private injury, and demandant of ſatisfaction and perſonal puniſhment, is not ſufficiently injurious to the public to deſerve death as a conſequence; becauſe the injury being more of a civil nature than a criminal, it ſavours more of a private treſpaſs than a public wrong; the public being no otherwiſe intereſted in it than as relates to the peace, which may be broken by it; or the poſſibility, that the party particularly injured may, by loſing his all, become burthenſome to others, for which the labour of the offender would be the only compenſation. Theft having more of private treſpaſs in it than public injury,

jury, it is too ſeverely and unjuſtly puniſhed by death.

Forgery is not the taking or carrying away by a mere natural, but an artificial power, in fraudulently mak ng or altering a writing to the prejudice of another's property, or excluſive right, affecting as well th ngs real as perſonal; ſuch as counterfeiting deeds to raiſe a falſe title to land, or change the legal courſe of transferring it; or counterfeiting deeds relating to perſonal chattels, procuring thus poſſeſſion of them, contrary to eſtabliſhed juſtice, without exchanging an equivalent in value for them. This offence is certainly no natural, but like theft and robbery, a ſocial and civil one; originally puniſhed by baniſhment, but never by death, until Elizabeth's reign, and then only for a ſecond, not a firſt offence. It could not even be known out of civil ſociety, and it was unlike theft and robbery, which might in a ſtate of nature be committed, by interrupting another in the enjoyment and occupation of what he ſeized to his preſent uſe. The care of ſociety, which regarded the ſecurity of private property under all denominations, extended no further than baniſhment and forfeiture of double coſts and damages, the pillory, loſs of ears, and the ſlitting and ſearing the noſtrils, for a firſt offence, and death for a ſecond; which puniſhments, tho' they may be thought worſe than death to the perſon offending, muſt have been impoſed as a dread and terror, by preſerving life, as a miſerable ſpectacle and proof of what others were to expect in a like caſe. A convicted forger, ſo marked, was a durable ſign of his own guilt, and diſplayed his puniſhment with

with his appearance ever after. By being a laſting example, the impreſſion of terror continued, and by ſeizing the intellect more forcibly than death, which is momentary, it was thought more efficacious in preventing forgery; until a ſecond offence proving the party incorrigible, death was impoſed as a ſuppoſed neceſſary ſubſtitute. Death however is by no means neceſſary, even on a ſecond delinquency: the forger, tho' marked for a firſt, may be made uſeful after a ſecond, by impriſonment and labour, and then (as in Holland) by baniſhment.

In the definition of the crime of forgery, it is laid down that the *intent* to defraud, that is, *ſucceed in the end of forging*, conſtitutes the guilt, provided it be manifeſted by ſome act, whereby the party proves a deſire of carrying it into execution, whether that act be detected or not, or the forger be prevented in ſucceeding in it. This act is called the utterance, or exhibition of the forged deed; but tho' the *intention*, after criminal actions are committed, is what ſtamps the guilt or raiſes the crime, independant of the action, which may be either juſtifiable or excuſeable, or not being deliberate, is ſubject to inferior cenſure; it ſeems very hard that where the *act does not attend it*, in caſes below treaſon, that death ſhould be the puniſhment of it: the crime, ſtrictly ſpeaking, is not complete until *committed*, when the *act* either manifeſts the *intention* of it, as guilty or innocent, or inadvertent, with or without a *criminal deſign*. It is the duty, and a charitable, a humane, and juſt one, in men to uſe all means poſſible with the operation of the law, firſt to prevent *the intention*

of

of committing crimes, by precept, then guarding themſelves againſt them with precaution, attention, and circumſpection; they ſhould conſtantly bear in mind the poſſibility and probability of committing them, and not depend on the laws alone as a barrier; or forget that they themſelves may be ſubject to their penalties. They are, as *Junius* * ſays, made to guard againſt what men *may do*, not what they *will do:* we ſhould be ſcrupulouſly exact in watching every deed, which may not be a counterfeit; and when we prevent its operation, puniſhment ſhould be abated; the offence not being complete, it cannot deſerve the ſame puniſhment annexed to it as when it is. In murder, the *bare intent* to commit it is no felony, even if manifeſted by a threat or aſſault, and the party *intending* it be prevented; the crime conſiſts only in the *act of killing maliciouſly and intentionally*, not accidentally, or by ſudden paſſion! Why then ſhould the bare *intent to forge*, or the *mere forging* of a deed and utterance of it, be equally ſubject to death, *whether the injury follows the act of forging and uttering or not.* It is the *injury* that calls for puniſhment, as a prevention in others; the *injury is the crime*, and not the *intent* or inſtrument by which it may be effected. This inſtrument or forged deed may be harmleſs, and its tendency to an eventual injury cannot deſerve the ſame

* A celebrated newſpaper declaimer, whoſe letters appeared in the Public Advertiſer from the end of 1769 to the beginning of 1772; the principle merit of which conſiſts in the force and accuracy of their language, and an elegance of ſentimental ſcurrility, often employed at the expence of truth, and generally without argument.

ſame puniſhment, as if that injury were compleated: all forged deeds are harmleſs till uttered; it is their utterance that *evidences* their tendency to injure, but that *tendency*, without actually *committing* the injury, as it is no more than a miſdemeanor, ſhould not be capitally puniſhed; the injury, *when committed*, is determined by the *intent* to injure; but to puniſh the *intent* as the commiſſion of *the crime*, is horrid.

The real and only crime of forgery, is the making or altering a writing to the prejudice or injury of another's property or right, and not the *mere making or altering that writing*. A man may make or alter a writing, and never let it eſcape him; he may exhibit it with *intent only* to impoſe on private opinion, as an intellectual fraud. All this is admitted by the law; but ſay the lawyers, it is the utterance, or exhibition of it, with intent to defraud another of excluſive property, that raiſes the crime, as much as the ſucceſs of it. If they would ſay, it raiſes the *criminal intent*, which if interrupted in its full career, would only be a miſdemeanor, and not *a capital crime*, they would be more logically and truly accurate; but to maintain that a *mere counterfeit deed, uttered ineffectually*, is ſuch a crime, as much ſo as if the *intent* of that counterfeit and utterance were fulfilled, is conſolidating the ideas of perfect and imperfect actions, and indiſcriminately puniſhing them alike; and alſo men, for what they either do or do not, contrary to the ſpirit of the law in the caſe of murder, the *mere intent* to commit which is not puniſhable at all; and contrary

trary to all the laws of nature and reaſon *. This is nevertheleſs the fact in England: men have ſuffered for the mere exhibition of the counterfeited deed, altho' no injury ſucceeded, no one's right or property was invaded, nor no public harm committed, except in the violation of the law's *letter*, in counterfeiting and exhibiting the counterfeit, without mentioning a word of the conſequence, or whether any thing injurious followed †. The rigid and unjuſt law being only broken in theſe caſes, without *an injury*, puniſhment is unneceſſary, at leaſt none ſhould be ſuffered but what is trifling. It is mathematically true, that the real injury of forgery, if prevented, is not committed; and therefore to puniſh the *intent* with death, and make it equally criminal as the actual injury, when the purpoſe does not attend it, is barbarous and improper: let ſome puniſhment

* Perjury, tho' committed with intent to take away another's life, was not puniſhed capitally but when the intent was executed; and tho' in France perjury is puniſhed with death, when another's life either has been *or might have been deſtroyed*, it is otherwiſe in England, where the mere intent to deſtroy life by other means, not being capital, there is no pretence for making an intent ſo by perjury.

† The caſe of the late Dr. Dodd is a remarkable inſtance of this fact. He forged and uttered a bond, procured bills at a diſtant day of payment for the money on it, was apprehended, aſſured that on return of the bills he ſhould not be proſecuted; he complied, but his proſecutors, who had received no other injury than loſing a large expected profit, inſtead of returning or cancelling the bond, indicted him upon it, and employed his broker, who gained 100l. by the tranſaction, as an evidence againſt him. He was condemned and executed, to the diſgrace of his proſecutors and their attorney, the diſhonour of his pupil (a nobleman) whoſe bond he had forged, and the rigour of our criminal law.

niſhment be inflicted for ſuch intent, in proportion to the proſpect of fulfilling, and the difficulty of detecting it; but let legiſlators not be ſo far loſt to their prudence, in addition to the impoſition of death, as to decide and inflict it *for crimes before they are accompliſhed**. Let the terror of puniſhment oppoſe the intent of all crimes, if poſſible—*Principiis obſta*; but let not the *intent be conſtituted criminal*, nor men be puniſhed for actions tending to evil, unleſs that evil be really committed. Tendency ſhewing only a diſpoſition to do wrong, ſhould never be puniſhed as the wrong itſelf, if perpetrated; which if it reſpect not the preſervation of life, a property certain, derived from the God of nature, but a property uncertain, derived from ſociety and man, is every way undeſerving the puniſhment of death; a puniſhment, which in forgery, as in the crimes of rape and theft, cannot be conſented to by thoſe who conſtitute the legiſlature; nor can the legiſlature be prudently, or otherwiſe juſtified, in inflicting it.

* If it be objected that forging and uttering are the crime, it may be anſwered that they conſtitute a crime without an injury.

CHAP.

CHAP. VII.

The Subject of criminal Actions and their Puniſhments examined.

AS we have conſidered diſtinctly the crimes of murder, rape, robbery, and forgery, which concern natural and ſocial property; and regretted that the puniſhment of death is inflicted alike in all, tho' they differ in their circumſtances, it comes in order to diſcuſs, by what mode inferior puniſhment would be preferable, either by preventing the commiſſion of future crimes, or by amending the criminal. Death, we have obſerved, affords no ſatisfaction for any injury but death itſelf, whether that injury affect an individual or the public.

As treaſon is defined to be an injury to the life of the ſocial compact or community, death is impoſed as a puniſhment more from the magnitude of the crime than its effects, no act of treaſon abſolutely and in itſelf taking away the exiſtance of that community: it is only the *tendancy* of the crime to diſſolve or murder the political body, that is puniſhed, and not the real diſſolution or murder of it, which ſeldom happens, never but on a revolution, under which all treaſons are buried. The ſeverity

therefore of the puniſhment annexed to treaſon, meaning an offence againſt the ſecurity of the immediate governing power for the ſuppoſed benefit of the governed, is ſevere, and often creates rebellion as an extreme, as well as a completion of the treaſon intended, whoſe puniſhment is no more.

Treaſon, conſiſting in a man's having, during a civil war, been faithful to an unfortunate King, or ſpeaking or acting freely on the doubtful right of a conqueror or uſurper, the puniſhment of it is dreadful, unjuſt, and ineffectual. So ſuſpicious of power are thoſe who poſſeſs it legally, that they puniſh with death, by a forced conſent, reſolved and refined into a legiſlative prudence, all thoſe who, by any trifling or inoffenſive *overt act*, ſhew an intention of infringing upon, or rebelliouſly, that is, illegally, to oppoſe it; but be ſuch an oppoſition legal or illegal, if it ſucceeds and prevails, inſtead of the oppoſers being rebels, or their oppoſition treaſon, they are reformers, and their reformation is not rebellion, but a revolution.

It is undoubtedly the intereſt of a well-governed ſtate, acting under and founded on wholeſome laws, that it ſhould protect itſelf againſt all its parts, or the encroachments of any in particular to violate its harmony, and interrupt the force and effect of its own ordinances; but tho' a violation of this kind is properly the higheſt known in the law, the puniſhment meant moſt certainly as a terror, is out of all proportion, and tends to enrich the prince at the expence of a ſubject's life, moſt cruelly, and by a kind of torture taken away,

to

to the injury of his innocent family, and ſometimes ſtrangers *.

Murder differing ſubſtantially from treaſon, is, inſtead of an *intentional* injury to the feigned political life of a ſtate, an injury to the real life of an exiſting human being: beſides the ſatisfaction of death for death, the ſtate ſuſtains the loſs of a member by it, and a probable one, by the pernicious example for others to murder; it thence puts a murderer to death, as a ſatisfaction to itſelf for the loſs it has ſuſtained, and this by a conſent not to be controverted †.

Robbery is an injury to private property, for which a civil ſatisfaction might atone; but the public being affected by the groſſneſs of private injuries, which diſturb private harmony, induſtry and mutual commerce, the civil ſatisfaction is abſorbed in the public, and the invader is puniſhed with a view to prevent future invaſion. In extending puniſhment to death, legiſlators ſuppoſe that the terror of it will anſwer the end, without thinking of the uſe of the criminal by labour and confinement, as a

* By the Stat. 7 Anne, Sect. 21, the ſeverity of the old law of forfeiture was ſomewhat abated. It enacted, that after the late Pretender's death, no attainder for treaſon ſhould extend to the diſinheriting of any heir, nor to the prejudice of any perſon other than the traitor himſelf. It alſo enacted, that Engliſh forfeitures and corruption of blood ſhould take place in Scotland (which before the union had different laws from England in reſpect to treaſon) as they did in England till the death of the then Pretender. By the Stat. 17 Geo. II. Sect. 39, made juſt before the death of the late Pretender, the Stat. of Anne is continued to the death of the ſons of the Pretender, ſo that when there is no Pretender, forfeiture and corruption of blood will extend only to the traitor himſelf. See note, p. 128.

† See p. 70.

ſatisfaction for the crime he has committed, and which he cannot otherwiſe make to the party injured by it.

Forgery is likewiſe held to be a public injury in the very act of forging, independent of its effects, on account of its deceit and fraudulent deſign; but if there be a caſe in which the injury is ſolely private, it is the preſent; notwithſtanding which, the very act of forging and uttering that act, is puniſhable with death, as well as the actual defrauding by it, which ſeems to be no part of the crime, altho' in reality the *injury* is the crime, and not the act or inſtrument by which it is effected. It would do more honour and ſervice to the nation, that a crime ſo loſely defined, were rectified, and that its preſent puniſhment were altered, in our criminal code, which ought to reject it, and record an inferior one for ſo ſocial an offence.

Excepting in treaſon, the perpetrators of crimes are generally the loweſt of beings, who, as they are capable of being made ſerviceable to the ſtate, while they are moſt liable from the nature of their condition to commit crimes, ſhould not, at any rate, be put to death for them, unleſs where life has been maliciouſly taken away. It may be objected, that death is inflicted in England to prevent ſlavery, and that the deſtruction of criminals is preferable to a ſcene of ſlaves, which in proceſs of time would magnify enormouſly, to the annoyance of the ſtate. Admitting that ſlavery tended not to *amend* a man, or alter the viciouſneſs of his will, and that it would produce no benefit to the public, but a burthen, it would certainly be a diſgrace, and ſhould not be adopted. The fallacy of reaſoning

ſoning on this point, proceeds from its being improperly expreſſed. Thoſe who reaſon againſt ſlavery, as an annoyance and burthen, would prevent it by putting criminals to death; they would puniſh the man more for his ſake, than the good of the public, by depriving him of life, rather than ſee him ſeparated, impriſoned, and employed, as eventually a greater puniſhment to him, and a real profit to the ſtate; to prevent his becoming a diſagreeable ſpectacle, and a burthen by ſuch a puniſhment, they would have him hanged. Death, moſt aſſuredly, is a cure againſt future crimes; the criminal hanged, can commit no more; and theſe generous, tender hearted reaſoners, would choſe to have him executed, rather than ſee him live, and repair his offences by labour, and his evil inclination by repentance. Thus making free with what they have no right to, their humanity may be meaſured and rated by their tyranny, and their juſtice by their cruelty, which they would employ to avoid bondage in a land of liberty. Puniſhment, and not prevention, is their deſire; and under the mantle of liberty, they would lead men to the gallows out of compaſſion, and hang them to prevent their future miſery, which no law ſuffers but to terrify others from offending. They would kill a man, as a criminal, to get rid of him, and not give him any opportunity of repairing the injury of a paſt crime by his conduct, or ſatisfying the community, which is ſaid to be moſt injured, by his conſtrained labour. Charitable men! as well might they contend, that corporal correction for inferior offences is hurtful to their humanity, and that death would be preferable!

Whipping is certainly of no uſe, but as it reſpects the poſſibility of preventing the criminal from offending again; there is no ſatisfaction gained by his puniſhment, as there would be by his labour and impriſonment, which, as theſe would be diſgracing to a free country, they contend ſhould be ſuperſeded by death. How abſurd! Can it ever diſgrace a free country to render criminals ſerviceable, and ſpare their lives for offences below murder? Idleneſs is the root of evil, and evil once committed, what ſo effectual to prevent it again by the ſame offender, as employment? Shall we be deprived of the advantages of a man's labour, after he has ſinned againſt the laws by his idleneſs, and not aſſume or compel the uſe of it as a right, when he has voluntarily abuſed it by his crimes? Or when diſappointed of it by his perverſeneſs or otherwiſe, ſhall we not baniſh him? But how are we to employ him? variouſly—Let each province or county have a houſe of labour*, and every criminal be employed according to his capacity; let there be a kind of government in each, encouraging the impriſoned criminals to induſtry, rather than making it abhorrent by rigour; preventive equity will then take place of puniſhing juſtice; the idle, who are moſt prone to evil, will be made ſenſible of their crimes, and by being enured and habituated to occupation, grow uſeful, and be inclined to amendment; the miſerable wretch, who from neglect of education, the force of example, and the prejudices of iniquity, which he cannot define, will avoid the puniſhment once inflicted on him, a ſecond time: death will be reſerved only

* See note, page 83.

only for murderers, and thoſe who from their ſuperior ſtations have leſs temptation to offend, are better prepared againſt offending, and knowing the conſequences, are watchfully cautious, on account of ſociety and themſelves, not to offend at all. It may be reaſonably preſumed that if a practice of this ſort prevailed, and mankind were to co-operate with the law in conſtantly ſtudying to prevent crimes, criminals would decreaſe; or if from human infirmity, and the certainty of the inſeparable connexion between *civilized man and crimes*, there will in all ſocieties ever be criminals, it is favourably juſt and humane, that as crimes cannot be entirely prevented, and it is not in the nature of man to be otherwiſe than he is, thoſe who commit them ſhould be puniſhed as lightly and profitably as poſſible, without death, and as a living example to others, in reſpect to the end propoſed by it, which is prevention.

It is not becauſe no lighter penalty than death is effectual, that it ſhould be encouraged as a puniſhment. It is a legiſlative duty to deter by every poſſible expedient, but not by any that is merely legal, becauſe the ſovereign will may be enforced tyrannically and infamouſly, in contempt of natural juſtice. Sir W. Blackſtone after *doubting* (as premiſed,) what he poſitively *denies*, namely, the right of the legiſlature to inflict death in any caſe under murder, very wiſely aſks, "Is it found upon "experience that capital puniſhments are more "effectual?" † Such puniſhments (ſays he) for offences of human inſtitution, are juſtified but by their enormity, frequency, and danger, and he quotes the particular words of Hale as his

† Vol. 4, p. 10.

authority. Yet by way of undoing what he thus reports, rather than advances from himſelf, he continues to ſay, that "it is not the fre-"quency of theſe crimes, or the difficulty of "otherwiſe preventing them, that will excuſe "our attempting to prevent them by a wanton "effuſion of human blood;" without offering a ſingle thought in favour of it, except, after declaring "his reaſoning would extend a great "deal too far," that "he would not be under-"ſtood to deny a right which perſons of ſome "abilities have doubted."

Let us here examine with what force he ſupports *his non denial* in this important particular. "When a queſtion (ſays he) ariſes, whether death "may be lawfully inflicted for this or that tranſ-"greſſion, the wiſdom of the laws muſt decide it, "and that the guilt of blood muſt lie at their "doors who miſinterpret the extent of their war-"rant, and not at the doors of the ſubjects, who "are bound to receive the interpretations that are "given by the ſovereign power;" † it appears from hence, that ſo high and uncontroulable is this power, that nothing but the guilt of blood can lie at the doors of thoſe who exert it, in putting the ſubject to death, who being obliged to receive their bloody interpretations, muſt ſubmit to them, without remedy. But in the *miſt* of this abſolute contradiction, he does not ſhew, either by reaſon or argument, that any legiſlature have the right "he would not be un-"derſtood to deny." Every act of a legiſlature is lawful, becauſe it is above all controul, except its own; and if it be ſanguine, the guilt is with its members, and the ſubject muſt ſubmit; ſo that the wiſdom of legiſlators, not their

† Vol. 4, p. 11.

their laws, which are but effects, muſt, according to Blackſtone, decide whether death may be inflicted as a puniſhment; and thus does he, by a ſtrong contradiction in terms, leave a right undetermined, except by ſurmiſes *againſt* it, which "he would not be underſtood to *deny*."

Such is the power of a legiſlature, that there is no act but what it may make capital. If the propriety of puniſhment be entirely left to the prudence of legiſlators, which is not here a queſtion, they ſhould puniſh no act with death but murder. Human fallibility ſhould be ever before their eyes, and they ſhould rather ſtudy to improve the virtues of mankind, than ſhed their blood for human offences: but inſtead hereof, they preſcribe penalties for thoſe actions which the refinements of civil ſociety produce; or, as Beccaria ſays, they puniſh by the laws the crimes which the laws have occaſioned; and as ſuch actions prove inconvenient or injurious, they attempt to puniſh them with more violence than is exerted by the hand that commits them; which brought this able writer in another place to propoſe a ſcale of puniſhments correſponding with a ſcale of crimes, that there might be a diſtinction in guilt, and not that inferior offences ſhould have the ſame penalties annexed to them as thoſe in the higheſt degree. Every injury being conſtituted criminal, and puniſhable, there certainly is no bounds of puniſhment but in the wiſdom and prudence of legiſlators, which may as well invent new penalties for new injuries, as continue the old, when they grow enormous, frequent, and dangerous, which they may poſſibly do in the degree, as human invention may point out public conveniences.

The

The invention of the people generally keeps pace with the invention of legiſlators; as the former employ their wiſdom and prudence to puniſh actions, the latter employ their ingenuity to avoid puniſhment in the manner of committing them. What is this but the reſult of licentious liberty, (which to enjoy, human actions are ſuffered to be reſtrained at the frequent expence of life) on the one ſide, and an imperfect government on the other? Conſequently mankind are puniſhed and ruled, not what like they ought to, and naturally would be, namely, virtuous and liberal, but what they are, vicious and abandoned; were they the former, legiſlators would not frame puniſhments in vengeance, nor would ſubjects require the force of vindictive laws to make them what they would otherwiſe and only be by nature, education, habit, and example; but as they are, it ſeems, impoſſible ever to correct either the ferocity of thoſe laws, or the errors of government, becauſe the one is the effect of the other, and each the convertible cauſe.

What is the plea of legiſlators for puniſhing forgery with death, but that it affects and endangers paper credit, which is a commercial and political benefit? A plea equally applied for puniſhing a rape and theft: if paper credit had never been found neceſſary, either in a public or private ſenſe; if the perſons of women were left to nature to defend them againſt the violence of men in ſingle combat; if property were leſs diſtinguiſhed, and mankind were habituated never to miſtake *mine and thine*, of courſe the puniſhment of death had never been inflicted for either of theſe human offences: and altho' public utility

lity ſhould prevail over private convenience, which defends paper credit, and the neceſſity of preventing rapes and robberies, if poſſible, it does not follow that death ſhould be inflicted as the means. If the hand of a legiſlator and an aſſaſſin are directed (as Beccaria ſays) by the ſame ſpirit of ferocity, it is evident that until the rigour of the one ſhall abate, and point to reformation, it may be expected that the other will infeſt our peace, and perhaps repeat his crimes, according to the raſhneſs with which they are puniſhed; and nothing but the mildneſs of the former can remove the barbariſm of the latter.

If all offences under murder were to be puniſhed with a view to preſent and future advantage, rather than by a revengeful hand, which makes the puniſhment unequal to the crime, the ferocity of offenders (except murderers) would moderate itſelf, and legiſlators be leſs called upon to prevent the evil, which either their ſupineneſs, ignorance, or temerity produces; crimes would in all probability be reduced in number; not any would be puniſhed but according to the degree of their guilt, and ſo as to make reparation for it; and the penalty of death would give way to virtue, humanity, and good government.

CHAP.

CHAP. VIII.

Of Forfeiture.

EVERY criminal after trial, conviction, and judgment, is *legally* dead, tho' naturally alive; he is then ſaid to be attainted, or corrupted by his crime, and is as effectually out of the cognizance and protection of civil ſociety, of which he was a member, as if he had never been in it; and he is entirely at their diſpoſal, by virtue of the conditions of the ſocial contract, to which he ſubſcribed, tho' in matters of death (letting alone murder) he could not conſent to them †. Thus dead in law, forfeiture is the conſequence, whereby the puniſhment is extended not only to ſtrangers, with whom the criminal had engagements, but to all thoſe of his family, who were not concerned in his guilt. It is true, we hold all our poſſeſſions from ſociety, and none are rendered excluſively our own, but by the laws of it; yet as ſtrangers, and a man's family may have an eventual intereſt in them, as well by his act, as the operation of law, the puniſhment of treaſon in him ſhould reſpect him only.

Treaſon, altho' conſtituted the higheſt of offences, can ſeldom or never affect government or ſociety, ſo as to warrant forfeiture beyond the

† See p. 70 and 75.

the life of the criminal; for government muſt be weak indeed, and negligent of its own welfare, if it be not at all times prepared to repel with vigour, by its ſovereign power, any internal attempt againſt it †. The maxim, that a traitor has violated the fundamental principles of government, and broken his part of the civil contract between King and people, and hath abandoned his connections with ſociety, is a ſtrained one, holding no more in the caſe of treaſon, than any other, which equally violates the fundamental principles of government, as murder, plunder, &c. except indeed that the former ſtrikes againſt the ſocial body, the latter againſt individuals.

Forfeiture is not pretended to be a neceſſary conſequence of the feudal ſyſtem, but claimed as a prerogative long before it was introduced: it was the reſult originally of the diſunion, or breach of faith between lord and vaſſal, or landlord and tenant, in the firſt inſtance, in whom it extinguiſhed eternally his heritable quality, and fixed a forfeiture to the Crown, by prerogative for ever, in caſes of treaſon; and in others to the lord, after the King's year day and waſte. Had the fœdal tenure never been introduced, forfeiture would have fallen, after the year day and waſte, to the criminal's heir, not the lord. Thus, as we have already ſaid, the crimes of the ſubject were

† As Monteſquieu ſays, that the puniſhment of death is the remedy of a ſick ſociety, it may here be remarked that the ſeverity of puniſhment for treaſon ſeems to be the remedy of a conſumptive ſyſtem of government and politics, reſerved for the uſe of thoſe men, who, conſcious of their miniſterial turpitude, are ever ready to defend it as indiſpenſably neceſſary. See note, p. 128.

were the profit of the prince, before the norman conqueſt; ſince then, the profit of prince and inferior lord. In the one inſtance, as a right of prerogative; in the other, of ſociety, and the feudal ſyſtem: both rights are mere pretenſions; the King is *ſupremum dominum*; that is, the Majeſty of the community; he repreſents all his ſubjects in the aggregate, and executes their will; all lands therefore belong to all ſubjects, determinately by ſpecific poſſeſſors or owners; indeterminately by the poſſeſſion of the ſtate, in the name of all its members. Before the fœdal ſyſtem, they were held independant of the King, or any ſuperior; ſince, mediately or immediately of him; their owners hold them of themſelves in holding them of him, as they cannot be conveyed from his political character.

If forfeiture in both inſtances *was* meant as a terror to prevent treaſon and felony, theſe ought to be abſolutely committed before it take place. An *overt act*, ſay the lawyers, is ſufficient in the former, as it evinces an *intention* to break the links of government: if a government be bad, or contrary to the known principles of the conſtitution, is a man puniſhable as a traitor for oppoſing it, or joining with others to overturn it by force? Tyrants, uſurpers, and mal-administrators, may deem him ſo; but he is not ſo in truth, becauſe defending thereby the conſtitution, which government has violated, he is no traitor. But ſuppoſe him otherwiſe, forfeiture to the Crown being a forfeiture to all ſubjects, how does it affect by its terror? By a forced refinement it may be defended, but as it extends beyond the criminal, it is ſo far wrong.

wrong. The puniſhment of death for treaſon, is juſtified by nothing but the neceſſity of the times when it is committed; but forfeiture, unleſs where the criminal himſelf is concerned, is ſevere and oppreſſive, becauſe his guiltleſs heirs and family, who have been trained from their infancy to expect a devolution of their anceſtors property, would be included in the puniſhment. It is not juſt, that becauſe he has violated the original contract as relating to himſelf only, he ſhould for ever forfeit all his eſtate and effects, or be himſelf put to death. Puniſh him for his violence, but neither prevent his being uſeful, nor puniſh the innocent with him; who not having violated the ſocial engagement, are every way entitled to ſocial protection; notwithſtanding it has been laid down that by ſuch an extention of the puniſhment of treaſon, as forfeiture for ever, with a corruption of blood, more ruinous in its conſequences than forfeiture itſelf, a terror is intended to be ſtruck by it in all families, who have, or may have property to loſe, ſo as to prevent treaſon from ever being committed. In fine, forfeiture and corruption of blood are ſo ſevere a puniſhment, involving the criminal's relations, family, friends, and ſtrangers in the misfortune attendant on his guilt, that it ought to be blotted out from all the criminal codes on earth; and tho' founded on *a fiction*, and originally claimed as a regal right, ceaſes to be a puniſhment for a future advantage, and becomes an injury to the advantage only of the Prince!

Are a whole family traitors becauſe my father is proved one? Am I, as an heir, to ſuffer for his indiſcretion, and the evil effects of his

political

political conduct? Are his wife, children, or kindred, to be brought to beggary and want, as conſequences of a cauſe to which they were utter ſtrangers? Natural reaſon and juſtice anſwer no, and authorize us to declare, that no puniſhment of treaſon ſhould extend to the diſinheriting of any heir, nor to the prejudice of any perſon, other than the traitor himſelf, who, if baniſhed, or otherwiſe diſpoſed of than being put to death, it would reflect an honour on the ſtate, and be an example worthy of imitation *.

* See Conſiderations on the Law of Forfeiture, written in 1744; when, from the neceſſity of the times, the ingenious author very warmly defended forfeiture and corruption of blood on the feudal principle; notwithſtanding the former was practiſed by the Saxons before the Norman conqueſt or feuds were eſtabliſhed.

CHAP.

CHAP. IX.

Of Impriſonment, Labour, Confiſcation, and Baniſhment.

MERE IMPRISONMENT, conſidered as a puniſhment, if contrived in ſuch a manner that one delinquent ſhall not aſſociate with another, but be kept for a limited time to ſome lonely exerciſe, and fed on a poor diet, may have the advantage of rouzing his compunction, but little to the public; his callous and iniquitous heart may be ſoftened by it, and humble him to a ſelf promiſe, that as his puniſhment is juſt, he will never deſerve it again; but as it reſpects the man more than the crime, it can only, like whipping him, putting him in the ſtocks, &c. be inflicted for leſſer offences, with intent to amend him, and correct the viciouſneſs of his conduct; his ſeparation from ſociety, friends and ſtrangers, from whom he ſhould receive no aſſiſtance to lighten the force of his puniſhment, or eſtrange him from a ſenſe of his guilt; and his confinement, wherein neither his health or faculties can be endangered, but where he may once a day meet his brother offenders before a moral and religious tribunal, will open his mind to reflection; the horror of a wicked conſcience may affright his ſober

thoughts, and a ſeries of perſonal reſtraint, in which he will find no opportunity of drowning a remembrance of his crime, by the alleviating converſation of a fellow ſufferer, may incline him to that virtue and goodneſs which he has once infringed, and make him lament the previous want of; his loſs of liberty, which he has abuſed, and his conſtrained employment, in which his will is not concerned, but which is forced from him as the due of his miſdeeds, without any other conſideration than that of puniſhing him for his own good, and as a return for his voluntary commiſſion of evil, may impreſs his mind with a fear of offending again; and after hating the puniſhing hand of juſtice, he may adore thoſe very laws he has broken, and which place him on a level with all his fellow ſubjects, and are equally with them his protection againſt fraud and violence.

All criminals therefore of a leſſer degree, ſhould be as much ſeparated from each other in their impriſonment, as from ſociety and the world, except in thoſe daily periods when they are convened and exhorted to virtue and religion; otherwiſe, and by letting them looſe on one another, they will form a body of offenders, and glory in their puniſhment, rather than feel a neceſſary remorſe at the recollection of their crimes. In numerous bodies (however aſſembled) each member adds vigour and ſpirit to the other, and when under legal cenſure, he execrates and ridicules that juſtice which has overtaken him, inſtead of humbly yielding to the propriety of his ſentence. The magiſtrate and proſecutor are equally accurſed by him, and he encreaſes the evil for which he is puniſhed,

puniſhed, by glorying in it. Each criminal is the comforter of the other, and the habits of a goal, where the priſoners live in common, make them all conſider themſelves as an aggregate whole, and an individual, ſo as to divert the misfortune of their impriſonment, until, like circled water, it dwindles enitrely away, and ceaſes to affect them: ſuch a puniſhment would but ſubvert the purpoſe of it, and the criminal, when liberated, inſtead of joining ſociety with a diſpoſition to be ſerviceable in it, would mix with his kind, improved in his vices, which he had encreaſed in his confinement.

Impriſonment then, to be uſeful to the criminal, ſhould be ſolemn and ſolitary, not ſocial and convivial; his exerciſe ſhould be for ſome public good; and according to his ſubmiſſion and repentance, ſhould he be indulged and encouraged; his diſpoſition to do what is right, and his ſenſe of ſhame and abhorrence of his crime, ſhould meet with favour; and while he ſuffers on one hand his puniſhment with reſignation, every hope ſhould be awakened in him, that according to his ſorrow and regret will be his future advantage and happineſs.

Labour was the portion of man in his moſt virtuous ſtate, after his *ſcriptural* tranſgreſſion *; but when he forfeits by his crimes the protection of ſociety, which he himſelf lives in as an

* The conſolation of Adam is well deſcribed by Milton; who, after reflecting on the conſequences of his tranſgreſſion, makes him ſay,

On me the curſe aſlope
Glanc'd on the ground; with *labour* I muſt earn
My bread; What harm? *Idleneſs had been worſe.*

B. 10. v. 1053.

aſylum of peace, and offends it publicly, or any of its members privately, his labour, of which before he was ſole proprietor, is properly due to that ſociety, which in its very nature has a right to the united ſupport of all its members. A raviſher, a robber, a forger, &c. and every inferior criminal having injured ſociety, can make it no reparation but in their labour, whatever reparation they may make for the private injury; their labour, whether for life, or a ſhorter time, while it ſerves the public, may be moderated to themſelves, according to their conduct under condemnation, and ultimately entitle them to a mitigation of puniſhment; it abounds in many advantages in reſpect to the criminal, as well as the public, while death as a puniſhment deſtroys all, and ſtrikes but a tranſitory terror in others.

CONFISCATION is alſo due from every criminal, who has either broken the ſocial compact by treaſon, or who has robbed or otherwiſe defrauded another of what was not his own; and tho' thoſe, who in general have nothing to forfeit, may be the readieſt to ruſh into the guilt of robbing or cheating, it is no reaſon that others who do ſo, and who are poſſeſſed of property, ſhould not forfeit it, or a proportionable part, as a compenſation for their crimes, to the party injured, while the public derive a benefit in the attempt to reform them by compulſive labour: a confiſcation of this kind would be an honourable and a profitable ſubſtitute for the ſevere and ungracious puniſhment of death, to which a felon is ſubject by the Engliſh laws, beſides the confiſcation of the profits of his lands, if he have any, for a year and

and a day, to the king, and all his goods and chattels for ever; a puniſhment nearly equal to that of the higheſt offence, and as ſuch, every way to be reprobated as productive of a legal evil, and not a legal good; becauſe it entails diſtreſs and penury on the inoffenſive, and may injure ſtrangers: confiſcation for treaſon, ſhould be only for the traitor's life; and for inferior crimes, it ſhould only be of a penal part of the criminal's property, be the nature of it what it may; indeed it muſt be remembered, that tho' confiſcation appears violent as a puniſhment, it is little more than a name in ſingle felony, where life is not diſpoſed of, the felon rarely having any thing to confiſcate; and as thoſe who poſſeſs property, require no ſuch terror of puniſhment, becauſe it implies that they have no inducements to commit ſingle felony, there is no neceſſity for preſcribing it in any new created crimes, ſince the abolition of military tenures, under which it often became a benefit between lord and vaſſal.

Banishment ought only to take place, when ſociety cannot derive any benefit from the criminal's labour; when he has nothing to forfeit, and when he prefers it to a higher penalty in perpetual ſlavery, which, while he lives, he ſhould be ſubject to on condition of returning from whence he is baniſhed before the end of a ſtated time. It almoſt implies in itſelf, that the criminal is good for nothing, and that there is no poſſibility of making him repair his crime, either by his ſervice to the public, or otherwiſe, except in dependant countries, remote from home, where neceſſity would oblige him to be uſeful, for his own preſervation, in

the cultivation of waſtes, and otherwiſe for the good of the parent community.

The greateſt ſtates on earth have been originally peopled by robbers, raviſhers, and other malefactors, who were either encouraged to colonize in deſerts, or new acquired territories, on condition of pardons for their crimes; or compelled to it as a puniſhment, which made neceſſity a duty, and they proſpered by their induſtry, to the admiration and jealouſy of countries more civilized than thoſe, which in time became their own; Roman grandeur was raiſed on the baſe of the moſt atrocious offenders, and American virtue, induſtry, proſperity and bravery, are the offspring of tranſported vice and indigence, which, whether at firſt removed, in Rome and America, from the temptations of vanity, effeminacy, luxury and pride, were converted into the contrary, under nature and ſimplicity, and defied the wanton attacks of thoſe from whom they departed, who, envious of their glory and happineſs, the reſult of virtue and true manhood, anxiouſly endeavoured to depreſs them, in proportion as they loſt their own by their folly and iniquity.

Baniſhment therefore, in doing a public and private good, by amending the criminal, and ſerving the ſtate, holds up a mirror to the legiſlature that preſcribe it; it teaches a leſſon, that altho' a man may become a criminal in his native country, from the errors and refinements of its policy and government; from its immerſion in voluptuouſneſs and wickedneſs, he may become virtuous and magnanimous in his puniſhment, by being baniſhed to a country, where the temptations to evil are wanting and unknown,

unknown, and where virtue, God and nature court all his attention.

Thus would the *end* of human puniſhment, which is only to guard againſt future crimes, be properly effected; impriſonment, labour, confiſcation and baniſhment, are a living correction of the criminal for the paſt; the benefits of theſe (either ſeparately or in all) repair the injury, and while the pains and the certainty of them, deter the puniſhed from offending in future, they afford an example of what others are to expect, as the fruit of violating thoſe laws which are made for the peace of every ſubject.

The *power and meaſure* of puniſhment are here unqueſtionable; no human blood is wantonly ſpilt; ſociety and the legiſlature exert a power not to be doubted, becauſe it is collected from the univerſal aſſent of all the ſubjects, for their general and particular good; which rather requires that we ſhould reſerve for the Deity to remove a human criminal from the earth, by his *own natural* means, for offences of human inſtitution, and not *mala in ſe*, than that man ſhould uſurp his right in doing it, under *human pretences*.

The arbitration of legiſlators, which is out of the reach of any ſtated rule, except their own wiſdom and prudence, is here defendable on the principle of utility, and human puniſhment operates as a recompence to the juſtifiable end of public and private advantage, which the wanton effuſion of human blood has never yet been known to produce.

CHAP. X.

The whole Subject diſcuſſed on the Principle of philoſophical Neceſſity.

HAVING advanced thus far in the diſcuſſion of a queſtion, whether the means of preventing crimes operate to their propoſed ends, in which it has been directly and indirectly ſeen that the actions of human kind proceed invariably from their volitions, which are governed by conſideration and judgment, and direct them in a proper ſelf determination; accordingly as that conſideration or judgment be influenced by conſtituted good and evil, it will probably be objected that we have exceeded the bounds of reaſon, and by a rigid attention to *cauſe and effect*, that we have proved, or endeavoured to prove, puniſhments to be of no effect at all; for that the actions of men, whether ſocially juſt or injurious, will be as they are, in ſpite of every puniſhment that the wiſdom or prudence of man can deviſe.

The weakneſs of the underſtanding may eaſily lead it to ſuch a concluſion; but truth hidden, and difficult of acceſs, as ſhe certainly is, will evince, that thoſe who may object in this manner, are

are neither neceſſarians, nor can they fully comprehend the fact. Whatever action happens, undoubtedly cannot be otherwiſe than it is; to ſay that it might have been otherwiſe, would be to ſay, that if the cauſe or volition of it (meaning the conſideration or judgment which determined it) had been otherwiſe than it was, it would not have happened. Admitting this to be true, it confirms the aſſertion; but altho' it might have been otherwiſe, which it moſt certainly *could not be*, it being *as it is*, it is infallibly right. If it was good, the volition that produced it, was directed by a good conſideration and judgment; if bad, the contrary. What effect then has the terror of puniſhment? The convincing a criminal that he will inevitably ſuffer it, or by influencing thro' the fear of it, his conſideration and judgment not to commit crimes, or committing them, that his puniſhment may amend him by its nature and impreſſion; reaſon, experience and judgment improve the underſtanding, and men correct their future actions by reflecting on the folly or impropriety of the paſt. If they be puniſhed for actions determined by a bad conſideration or judgment at one time, which are cauſes, their bad effects are leſſons, teaching them to be determined by a good conſideration and judgment at another, and by thus changing the cauſe, as far as in their power, to benefit by the effect.

The bulk of mankind are creatures of habit, and ſlaves to conſtituted evil by cuſtom, which with them is a ſecond nature; it is from hence that they ſupply the criminal court with buſineſs; and being generally governed by a depraved conſideration and judgment, they fall into

into actions which are morally puniſhable: if it be aſked, whether a man who *did an act yeſterday* that he *diſapproves of to-day*, cannot avoid *doing the like to-morrow*, it may be anſwered, that he freely *may* or *may* not, according as he may reſolve; or if he poſitively determines to-day that he will do otherwiſe to-morrow, cannot he act according to that determination? it may alſo be anſwered, that he freely *may or may not:* he is at full liberty to do either, and if that determination remain in his mind till the morrow, and he have the *ſame* opportunity as yeſterday, he will act accordingly, and not otherwiſe; yet in both caſes will the action *be inevitable*, and as an *effect*, immediately be connected with its *cauſe*, which is the determination. But how is the determination to be rightly directed? It is always, and in all caſes preſumed to be ſo; and until things can be ſeen in their conſequences, before they be committed, they will always be ſo. Experience then will render a man virtuous; it certainly tends to make him improve his judgment; yet ſo ſtrong is preſent temptation over the weakneſs of a human being, that it drives away intermediate reflection, revives the determination of *yeſterday* in his mind, and changes his reſolution of *to-day*, not to determine the like *to-morrow*; but when to-morrow comes, his volition is the ſame, and he neceſſarily, but freely acts as he acted yeſterday. This is liberty and neceſſity, not fate, or predeſtination, as ſome would ignorantly have it *. The cauſe, meaning conſidera-

* While we have the free and entire uſe of our faculties, and are not controuled in our road to happineſs, we are in a ſtate of moral liberty; and by an obedience to the invariable

conſideration and judgment, is always free; the effect, or the actions following the volition, is invariable, neceſſary, and unavoidable.

A man who commits a burglary, acts under a will influenced by a bad conſideration; while another in an act of charity, acts under a will influenced by the reverſe. The act of both was equally inevitable; and had the conſideration and judgment of both been the ſame, either houſebreaking or charity would have been the convertible effects: when it is ſaid that a burglary committed, might not have been committed; the amount is, that if the motive, or conſideration and judgment had been otherwiſe, it would not have produced it; or a reflection or regret in the agent after committing it, who may ſee it then in a different view, and from its effects ſubject him to puniſhment, may prevent ſuch a motive in his mind for the future; but let him reſolve as he will, he cannot tell how he *may or may not be determined*, until the moment arrives, when he is called upon to exert his volition. He may flatter himſelf, that by an alteration of his future determinations, happier effects will ſucceed, and that he will merit applauſe

riable laws of nature, we are in a ſtate of neceſſity. But when we loſe the command of ourſelves aſſigned us by nature, and are determined by falſe motives to be vicious and miſerable, we are in a ſtate of moral ſlavery. In the former ſtate, nature governs abſolutely, invariably, and inſenſibly to us, making our actions thus our own. In the latter we are led to wretchedneſs, under the guidance of capricious tyranny. The free uſe of our faculties, under the direction of God, conſtitutes our moral liberty: the uſe of them in ſubjection to irregular, uſurping paſſions, under ſome unjuſt power or influence, conſtitutes our moral ſlavery.——The Rev. David Williams.

plauſe for them inſtead of cenſure; but if the ſame conſideration and judgment ſhould ever influence him again, the ſame action will certainly follow, unknown to him: it is contingent; it *may or may not be what it will be*, according to the contingency of the conſideration and judgment. No action is fixed or fatal; it is only the effect that is ſo, and that no otherwiſe than as relates to its immediate and known cauſe. The contingency of cauſation, or that conſideration or judgment which determines human actions, by a power of proper ſelf determination, uncontrouled by the Deity, implies, that that cauſation is no object of fore knowledge to the Deity; it muſt be *certain before it can be ſeen to be ſo.* If ſeen certainly *not to be*, it is incompatible with its being even *poſſible not to be*; nothing therefore that *may or may not be*, can be previouſly known to be *either one thing or another* by the Deity, unleſs an event *contingent* in itſelf be *certain to God*, which is contrary to the nature and truth of things, becauſe that would be making things *certain to God antecedently*, tho' uncertain in their events; conſequently there being *no preſcience in the divinity*, there can be *none in man*, who, while he enjoys a promiſe to himſelf that he will determine his future actions by his paſt, cannot tell what they *will be*, however he reſolves on what *they ſhall be.* The uncertainty of their cauſe, which is momentary in its operations, or temporary, makes them *previouſly* uncertain, tho' they will be certain *eventually.*

To explore therefore the cauſe of evil, is to ſearch out the cauſe of the motives to commit it, which is ſocial and factitious, not altogether natural,

natural, and depends on the principles of virtue and vice. The leſs men are habituated in the practice of conſtituted good, or made ſenſible, either internally or morally, that it is always preferable to conſtituted evil, the leſs taſte they will have for the one, and more inclination for the other; conſequently the want of taſte for ſuch good, and the prevalence of the inclination for ſuch evil, are cauſes ſolvable into conſideration and judgment, which rule their volitions, and become motives, producing actions that either are or are not pernicious, and prohibited in ſpite of every thing to the contrary, meaning that thoſe actions will happen as the effects of ſuch volitions, by their own determination. A man of taſte, ſays Mr. Hume, is always an honeſt man, whatever frailties may attend him: were all men ſo, all men would be honeſt; but it is impoſſible they ſhould be ſo; nature or conſtitution aſſiſts but little in making men ſocially honeſt, however ſhe would make them ſo, independant of civil and political ſociety. Education, habit and example may refine them, and practice render virtue familiar and eligible: to theſe is owing our moral conduct, and in the degree as they are good or bad, will be the real meaſure of human virtue or vice.

CHAP.

CHAP. XI.

Of the Cauſe of Vice, and the Effect of capital Puniſhment.

MR. Henry Fielding *, a man of great penetration and humanity, has obſerved that the cauſes of vice are idleneſs, drunkenneſs, and gaming; to prevent which, he has capitulated the proviſions enacted by the laws: but when the mind of evil doers is not trained to good, but prone by cuſtom to bad actions, the laws are rather ſnares than preventives. They may terrify by their puniſhments, but not altering the nature of a man, they puniſh him when it is impoſſible to correct him: all the puniſhments that have ever been deviſed or practiſed, have not yet prevented conſtituted crimes, which are and ever will be, more or leſs, committed, moſt probably while ſociety exiſts. Their conditions will be broken in the laws of them, and nature convince the ſocial body, that however ſhe may have influenced man in his original ſtate, ſhe will not be forgotten in his civil or artificial one, which, until it give to all its members a mutual taſte for good, will be conſtantly ſubject to evil, and a partial commiſſion of criminal actions.

Mr.

* See his enquiry into the cauſes of robbing.

Mr. Fielding thought it poſſible to remove vice, or leſſen the practice of it, by a vigorous exertion of the laws againſt what he ſuppoſed produced it; but he found himſelf miſtaken. In a chapter on the difficulties attending proſecutions, he has ſuggeſted ſix reaſons for them; one only of which being applicable to the purpoſe of this eſſay, it will be proper to remark: it is, that the tender hearted cannot take away the life of a man. Had Beccaria read this paſſage before he had written his tender hearted eſſay, what would have been his tranſports! At all events he felt it, and enlarged on the humane idea of it, to the compaſs we find in his ingenious diſquiſitions on crimes and puniſhments.

Mr. Fielding, in his zeal for the execution of the law, calls this tender heartedneſs, an error ſpringing originally out of a *good principle in the mind.* Theſe are his words: "It is certain that "a tender hearted and compaſſionate diſpoſi- "tion, which inclines men to pity and feel the "misfortunes of others, and which is even, for "its own ſake, incapable of involving any man "in miſery, is of all tempers of mind the moſt "amiable; and tho' it ſeldom receives much "honour, is worthy of the higheſt. The na- "tural energies of this temper are, indeed, the "very virtues principally inculcated in our ex- "cellent religion; and thoſe who, becauſe they "are natural, have denied them the name of "virtues, ſeem not, I think, to be aware of a "doctrine that denies all merit to a mind, which "is naturally, I may ſay, *neceſſarily* good. In- "deed this paſſion of love or benevolence, "whence this admirable diſpoſition ariſes, ſeems

"to

" to be the only human paſſion that is in itſelf " ſimply and abſolutely good; and in Plato's " common wealth, or what is more, in a ſociety " acting up to the rules of chriſtianity, no danger " could ariſe from the higheſt exceſs of this vir- " tue; nay, the more liberally it was indulged, " and the more extenſively it was expanded, the " more would it contribute to the honour of the " individual, and to the happineſs of the whole: " but as it hath pleaſed God to permit human " ſocieties to be conſtituted in a different man- " ner, and knaves to form a part of every com- " munity, who are ever lying in wait to deſtroy " and enſnare the honeſt part of mankind, and " to betray them by means of their goodneſs, it " becomes the good natured, the tender hearted " man to be watchful over his own temper, to " reſtrain the impetuoſity of his benevolence, " carefully to ſelect the objects of his paſſion, " and not, by too unbounded and indiſcrimi- " nate indulgence, to give the reins to a courſer, " which will infallibly carry him into the am- " buſcade of an enemy.

" For want of this wiſdom, a benevolent, " tender hearted temper very often betrays men " into errors, not only hurtful to themſelves, " but highly prejudicial to ſociety: hence men " of invincible courage and incorruptible in- " tegrity, have ſometimes falſified their truſt; " and thoſe whom no other temptation could " ſway, have paid too little regard to the ſanc- " tion of an oath, from this inducement alone; " hence, likewiſe, the miſchief which I here " endeavour to obviate, hath often ariſen, and " notorious robbers have lived to perpetrate fu- " ture acts of violence, thro' the ill judging ten-

derneſs

" derneſs and compaſſion of thoſe who could and " ought to have proſecuted them."

Now juſt as Mr. Fielding may be in part, and humane as he certainly is in all of this, it muſt be obſerved that the tender hearted man, declines proſecuting, but becauſe *death* would be the conſequence. His indulgence would not give the reins to a courſer which will infallibly carry him into the ambuſcade of an enemy, if inſtead of death, an *inferior* ſentence were to be pronounced.

Such a tender hearted man, continues Mr. Fielding, ſhould conſider that the principal duty which every man owes to his country, for the ſafety and good of which all laws are eſtabliſhed, is, that he contribute all that in him lies to the due execution of thoſe laws. True, and every tender hearted man would do this, if no law inflicted death for offences of human inſtitution: he will behold all injuries done by one man to another with indignation; but, unleſs where life is concerned, he will not proſecute another to death; becauſe he conceives that an inferior puniſhment does not reſemble the meek ſpirit of him who would not aſſiſt in blowing up his neighbour's houſe to ſave a whole city from flames, but rather tends to make the criminal uſeful, amend him, and deters others, which cannot be the caſe if he be hanged. The tender hearted man ſees the offences of his fellows, who ſeize on the property of others, and put the innocent in fear, in a clear view; but before he determines on them, he conſiders the cauſe, and diſcovering it in the badneſs of their conſideration and judgment, he is ſenſible that death is too much to be inflicted on them for actions which

neceſſarily happened in conſequence; yet he is ready to contribute all that in him lies to the due execution of any law that does not take away life, for human offences. He even doubts the propriety of that learned judge's † reaſoning in a trial for treaſon, who addreſſed the jury, and ſaid, that becauſe miſery and deſolation, blood and confuſion *would or might* have happened had the treaſon taken effect *(which it did not)* the life of the traitor ought to be taken from him; becauſe the treaſon not taking effect, the *intent* to commit it merited an inferior puniſhment. What reaſonable man would wiſh to have another executed for merely intending to rob or murder him? It is a falſe concluſion never to be admitted, that becauſe a man has once teſtified an intention to do violence by treaſon, or any other act, he will continue in it ever after, and therefore ſhould be put to death as a cure.

Intention undoubtedly conſtitutes a crime, and renders a prohibited act, *when committed*, criminal; but to puniſh a man for a bare *intention* to commit a crime, when it is *not committed*, is cruel: all that the laws require is, that crimes ſhould not be committed; and if they be not, would you puniſh a man for what he has *not done*, merely becauſe he *intended* to do a criminal act? It is this *intention or tendancy* that is puniſhed in treaſon, equally as the evil *if committed*; which to prevent in future, is puniſhed with death:—the remedy is infallible, but nevertheleſs unproportionably violent and unauthorized.

† The firſt lord chief juſtice Pratt.

CHAP.

CHAP. XII.

Of the Idea of legally preventing Crimes.

AS it is better to prevent than puniſh crimes of human inſtitution; and as the laws of man are made for that purpoſe, it is proper to enquire what means are provided to ſo ſalutary an end. A ſociety of freemen, governed by laws of their own making, are ſuppoſed to require no warning of their pains and penalties, becauſe being parties to them, they are left to a remembrance of their own acts, while the magiſtrate but officially pronounces thoſe laws, and executes them when ſet at defiance by the raſhneſs of the ſubject. Nothing can poſſibly tend more to prevent crimes, than a recollection in the mind of every free citizen, that he himſelf has annexed a puniſhment to them, which he will certainly ſuffer on committing them. But as it is impoſſible to reduce the actions of men to regularity, and as they will become criminal from a variety of cauſes, the community has but a weak dependance on individuals for the performance of human juſtice, or an obedience to human laws. If it were poſſible for men to bear in mind, that as they themſelves have conſtituted crimes which they have rendered penal;

and that they would never commit them, it were poſſible for them to live without any law at all. The ſame attention to the obſervance of human laws, which may be neceſſary for the good of men, and which reſults from a fear of their own appointed puniſhment, if exerted for the ſame good, without laws, would make all laws uſeleſs; or in other words, if men could even be brought to an univerſal obedience of their own laws, ſo as that none of them ſhould ever be broken, it would imply a degree of perfection which is above every human law whatever. Each individual being attached to his own good impartially, and the good of others without priority, would as well, if not better, purſue and preſerve them without law, as with it; and as ſuch, no inconvenience or injury would ariſe to make it neceſſary to prohibit and prevent them by the fear of puniſhment. But as it is the reverſe, and the purſuits of men vary with their paſſions and falſe ideas of happineſs, their actions, which ariſe from the impreſſions of external objects on their minds, are limited, in order to prevent and avoid anarchy and confuſion, in which the ſtrong would diſpoſſeſs the weak of their property, without making them an equivalent return, and which would make all things depend on force or tyranny, or ſuperior cunning; to avoid which, civil ſociety and human laws were of neceſſity formed as a remedy. As the barbariſm of mankind forced them into theſe conventions, it is not to be expected that they have it in their power as readily to obey, as they are forward in making laws. The motive to the one, makes the other uncertain; and the ſame men, who ſuffering by

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an injury, prepare a remedy for it, may, probably, ſuffer the puniſhment it preſcribes, from a different motive and view of advantage.

King Alfred wiſely inſtituted decennaries and frankpledge, wherein every neighbourhood and tything of freemen in his kingdom, were mutually pledges for each other's good behaviour; and as being anſwerable for the reverſe, they were neceſſarily kept on a guard, as well againſt committing evil themſelves, as to prevent others from offending. Unfortunately this inſtitution, under which liberty was not in the leaſt affected, fell into diſuetude. Every man might do what was proper for him to will, and there was no reſtraint in the improvement of knowledge and truth, which were equally free: but inſtead of this wholeſome proviſion to the end, that the laws ſhall be obſerved and crimes prevented, the mode of requiring ſecurity of the peace was ſubſtituted by recognizance, which was forfeited on a breach of it. This recognizance was demanded on ſufficient teſtimony, that the peace was intended previouſly to be broken; or at the diſcretion of the magiſtrate, in virtue of his office for things within his own knowledge. This is all the law regards, by way of prevention, inſtead of the caution mutually obſerved among the citizens at large, under decennaries and pledges for mutual good behaviour and the preſervation of the peace, which ſeems to have been dropped and aboliſhed, accordingly as the affairs of men made it more and more neceſſary to eſtabliſh them. "We cannot "but obſerve with concern (ſays Sir W. Black-"ſtone *) what miſerable ſhifts and lame ex-

* V. 1. p. 365.

" pedients have from time to time been adopted, in order to patch up the flaws occaſioned " by this neglect." Under the inſtitution of Alfred, idleneſs and vagrancy were unknown; induſtry engroſſed all that time of the labouring ſubject, which otherwiſe would have been employed iniquitouſly; and no opportunity was found to protect any other poor than the infirm and impotent. " If none were relieved (ſays Sir " W. Blackſtone *) but thoſe who are incapable " of getting their livings, and that in proportion " to their incapacity; and if every poor man " and his family were employed whenever they " requeſted it, and were allowed the whole pro- " fits of their labour, a ſpirit of chearful in- " duſtry would ſoon diffuſe itſelf through every " cottage; work would become eaſy and ha- " bitual, when abſolutely neceſſary to their " daily ſubſiſtance, and the moſt indigent pea- " ſant would go thro' his taſk without a mur- " mur, if aſſured that he and his children (when " incapable of work thro' infancy, age, or in- " firmity) would then, and then only, be en- " titled to ſupport from his opulent neigh- " bours.

But as theſe proviſions, not only to the end of induſtry, but to protect us againſt indolent and ſuſpected perſons, are almoſt forgotten and deſtroyed, and no other mode of preventing crimes remains than what the ſucceeding laws for ſecuring the peace point out, liberty is enjoyed licentiouſly, idleneſs finds encouragement, vice encreaſes, until poverty and infirmity overtaking the vagrant ſubject, he either falls a victim to criminal juſtice, or becomes an incor-

* V. 1. p. 361.

incorrigible burthen upon thoſe who reap the fruits of their induſtry, emulation, and care. On the contrary, were the legiſlature firſt to reſtore a ſyſtem of domeſtic and mutual frank-pledge, after the manner of Alfred; were the magiſtrate to be more attentive to the ſubject's conduct, whoſe actions ſhould be more encouraged to be naturally good, and leſs reſtrained in human evil; the community would mutually be animated in the cauſe of virtue, and every individual would contribute his ſhare, in order to the well being of the whole, ſo as to form the only effectual mode of preventing crimes and avoiding puniſhments.

CHAP. XIII.

Of the criminal Laws of England.

WHOEVER takes a view of the criminal laws of England, muſt admire with what care the legiſlature of that country has provided againſt all kinds of offences from treaſon (the higheſt) down to the bare apprehenſion of their being committed by the ſubject, including every injury either againſt the King or his prerogative, againſt God and the eſtabliſhed religion, the public at large, and individuals in private; and it would be glorious indeed, if theſe complex proviſions founded on the ſpur, more than the neceſſity of the occaſion, were productive of the purpoſes they were intended to effect.

To thoſe who are unacquainted with human nature, and blind to its fallibility, it may appear that mankind are governable according to the caprice of men; and that nothing more is neceſſary to confine their actions or bend their inclinations, than to ordain that ſuch as are deemed injurious and inconvenient, are to be reſtrained with the ſame facility as the laws which forbid them are framed.

Apoſtacy, hereſy, con-conformity, contempt of the religious eſtabliſhment, blaſphemy, ſorcery,

cery, and drunkenneſs, crimes which proceed from paſſion and opinion, are puniſhable by fine, impriſonment, and pillory; treaſon, which is ſometimes the effect of the beſt of intentions, is puniſhed with death, forfeiture, and corruption of blood; miſpriſons, contempts of the King and his government, by impriſonment and forfeiture for life; offences againſt public juſtice, peace, trade, health, and œconomy; againſt the perſons of individuals, their dwellings, and their private property, by more or leſs ſeverity with death, baniſhment, impriſonment, and fine; inaſmuch, that there is ſcarce an injury or inconvenience in the tranſactions of men, but what is provided againſt by ſome puniſhment or other. This is an unpleaſant portrait of human depravity, looking as ifmen were determined, from the commencement of civil ſociety, to beat down all thoſe fences which they themſelves erected for their joint and ſeparate good. What is this but a proof of the weakneſs of human invention, which corrupts rather than promotes the well being of man, who would be leſs iniquitous in a political ſenſe, were he leſs attempted to be controuled in his conduct by ſevere puniſhments, leſs ſeparated from thoſe who govern him, and if he lived with better examples before him than the aggrandizement of one ſet of men diſtinguiſhed from the dependance and poverty of another.

So particular a liſt of crimes, as the proviſions of the Engliſh laws are intended to prevent, convinces us that there are few or no conſtituted evils but men will commit in ſpite of every penalty. There are ſome it is impoſſible they ſhould not commit, and others to which they

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are led by the neglect of the magiſtrate, the deſtruction of Alfred's inſtitution of decennaries and frankpledge, and the abuſe of liberty in a country where the ſtudy of nature, which abounds with every object of human happineſs, is either unthought of, or eſtranged from the mind by ſocial, falſe, artificial, and deceptive views; from whence it follows, that what the rigorous and impatient hand of man contrives, in order to prevent the evils created by man, is fruſtrated by man's contrivance, who not being as ſtudious in procuring obedience to his own laws, as he is violent in making them, muſt ever behold them broken by his fellows, which makes it indiſputably neceſſary that no puniſhment for offences of human ſhape ſhould be inflicted but what is corporal and living; then only might England boaſt of the utility of her puniſhments for crimes which accompany its policy, wealth, and government, and Ruſſia not be alone in avoiding the penalty of death.

CHAP.

CHAP. XIV.

Concluſion.

THAT this eſſay may be well underſtood, it is written on the avowed and manifeſt principle of philoſophical neceſſity, which admits, that altho' the actions of men, *when committed*, cannot be otherwiſe *than they are*, yet that *their future may*. It is the connection of *cauſe and effect*, the *minds of men and their actions*, the impreſſions of outward objects and their motives, that make them what *they are and will be*, whether it be what they have conſented to call good or bad; mankind having an indiſputable will, are free to choſe, and governed in their determinations of the objects of their choice, by conſideration and judgment; *fataliſm and predeſtiny are effectually excluded as having no exiſtance or predominency over the affairs of men*, which with regard to the Deity are undoubtedly right, tho' conſtituted morally wrong by man. Let him be univerſally trained and diſpoſed to moral good, and there will be no moral evil; but as ſuch evil is inſeparably connected with, and blended in human tranſactions, which relate only to himſelf, either from his inequality, the diſparity

diſparity of his ſentiment, his wiſdom, and his ignorance; as the actions of men cannot in nature or reaſon be *civilly* juſt, from the perpetual change of their paſſions, their intereſts and purſuits, however juſt they may be with reſpect to the *univerſal ſyſtem of nature* *; ſuch puniſhments ſhould alone be impoſed to regulate and move their will to the performance of conſtituted right, as are calculated beſt to do ſo without reflecting barbarity on thoſe who impoſe it wantonly or ignorantly.

In the preſent glorious ſtate of improvement, when philoſophy ſpreads itſelf like a celeſtial arch over all the world; when virtue, truth, and wiſdom are unſhackled, it was impoſſible but that the ſubject *of crimes and puniſhments* ſhould draw philoſophical attention. The many cart loads of our fellow creatures that are dragged away to the gallows, and there put to death, like dogs, for crimes of human inſtitution, before a ſurrounding multitude, who make the woeful ſpectacle a holiday, rather than a ſcene of ſolemnity and ſorrow, is too piercing a reflection for the tender hearted or the intelligent to diſpenſe with without a ſigh; or to paſs over unheeded and indifferently, without looking a little into human infirmity, and examining the nature of man; exclaiming at the ſame time, that however perfect in himſelf, he is more or leſs wretched, miſerable, or happy, as he is more or leſs connected with his fellows under the government either of wiſe men, tyrants, fools, or ſanguinary laws.

If

* See my Conſiderations on Philoſophical Neceſſity, publiſhed by T. Cadell.

If therefore what is here offered to the conſideration of the humane and tender hearted, among whom are to be found men capable of conſtituting a legiſlature, be received with as much indulgence as it is ſubmitted with reſpect and humility: if it be a means of drawing a public deliberation, or finally cauſing a reviſion of our criminal code, or of ſnatching from death one unfortunate criminal who has committed an offence of human inſtitution, its reward will exceed its deſert; but failing in this, and ſucceeding only in meeting the ſympathy of its readers, after convincing them that ſuch offences are ideal, artificial, and conventional, and that without the aſſiſtance of art, an enlightened underſtanding, education and example, it is not in their power to abſtain from them, the purpoſe of it will be fully anſwered; and exciting commiſeration over the peradventure of every ſentenced and condemned criminal, it will have its intended effect, in ſoftening the human heart, and inclining the intellect to liſten to the voice of truth.

Grateful as all men ought to be to the great Creator of the univerſe, whoſe exalted beneficence hath imparted to them their reaſoning faculties, they ſhould hold themſelves indebted to thoſe among them, from whoſe more enlightened wiſdom and knowledge additional rays may be communicated.

To reform the underſtanding, correct and enlarge the heart, to reſtore mankind to what they naturally are, and not remake them, is the duty and buſineſs of freedom and philoſophy; and ſhould any thing in this eſſay tend to ſo glorious

glorious an end, the approbation of its readers will be the ſatisfaction of the author, whoſe ſole view has been to aſſiſt, if poſſible, in the ſearch after truth, in which the happineſs, proſperity, and preſervation of all human beings are materially intereſted.

BOOK

BOOK II.

CHAP. I.

Of the Subject and Purpose of this Book.

AS in our enquiry into the cause of crimes and punishments, in the former book of this essay, we have taken a view of the nature of man, and demonstrated that he is punished for what he is suffered and tempted to do by the nature of his education and government, and not that he is prepared by either for the practice of that good which he is punished for violating; it now occurs that some enquiry is proper to be made into his dependance on the Omnipotent Father, and into that adoration and communion with the Creator, which tend to glorify him, and point out the happiness and superiority of his *reasonable* creature among all created and finite beings. We shall therefore treat of the idea of God and religion, by which mankind are connected and held in communion with him,

him, and thereby confined within the pale of peace and proſperity; to the end that it may be ſeen how far it is poſſible for them to avoid crimes in proportion as they are truly religious and mindful of their duty towards God and themſelves.

In a purſuit of this philoſophical and humble kind, there can be no apprehenſion or fear that it will be conſidered as immoral or profane, becauſe tho' the inveſtigation may preſent to us the barbarous effects of religion ſince the decline of paganiſm, and the jewiſh diſpenſation, in the progreſſion of chriſtianity, it is not to be underſtood that the purpoſe of it is intended to be defeated, or its uſefulneſs denied.

To men trained up in inſuperable prejudices, and pacing in religious and deceptive trammels, we may expect that this book will be exceptionable; but with every reſpect for the ſincerity and judgment of ſuch men, we muſt remark, that as it is written with a moſt ſtudious and fervent regard to God and man, every charge of profaneneſs or immorality will recur with charity and forgiveneſs.

In treating, as is done in this book, of God and religion, of which a hiſtory is deduced, it will appear for the purpoſe of ſhewing, that without a careful attention to them, mankind will forget the end of their creation, and ſubvert their happineſs, the principles whereof they are endowed with at their birth; and that as truth will ruſh into their minds in defiance of force, it is the intereſt of ſtates to encourage its cultivation by all poſſible means, which depend on the freedom of thought and enquiry,

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and not on civil or religious reſtraints, which create falſhood, and govern them in tyranny and oppreſſion: hence hereſy and toleration, the extremes of power and vice, liberty and virtue, are conſidered in their purpoſes and conſequences; chriſtianity is examined in its influence over the ways of men, either morally, politically, or ſpiritually; and the progreſs of it ſince the reformation in England is particularized, with a view to open to the virtuous reader its progreſſive effects under tyrants, hypocrites, knaves, and fools; but by no means to derogate from its internal excellence, or impeach the wiſdom or divinity of its doctrine, as might wantonly be ſuſpected by bigots and fanatics: for whatever picture the hiſtory of religion, in its general ſenſe, may afford, or chriſtianity in particular in chriſtian ſtates, until the eſtabliſhment of it as a national church in England, where it tends to incline the heart to moral good, and chace from it the thought of moral evil, and thence is the admiration of all men, it is undoubtedly of the utmoſt conſequence in a free country to civil government, and ought to be preſerved as the moſt liberal mode of worſhip and rule of moral conduct on earth.

Thus premiſing, by way of neceſſary caution, againſt all illiberal and unjuſt prejudices, the philoſopher and the moraliſt will find, that notwithſtanding the devaſtation and confuſion which chriſtianity has made in different parts of the earth, for temporal rapacity, in oppoſition to human juſtice, which it is calculated to promote, it is every way uſeful, beneficent, and

gracious, for the prevention of crimes, by inculcating in the minds of men an idea of puniſhment, morality, and above all, a Supreme Being; for which reaſon we have enlarged upon its nature; and by rendering hereſy and reſtraint contemptible, and toleration productive of good, we have while we conſidered the Deity as all excellence and knowing, from whom man's happineſs and proſperity are deducible, reviewed his ſuperſtition and infancy, in dark and ignorant ages, in compariſon to his wiſdom, power and improvement, in the preſent day.

CHAP.

CHAP. II.

Of the Idea of God and Religion.

THE powers of the mind have hitherto been found too feeble to penetrate with certainty into the ſubject of God; a name not leſs incomprehenſible than it is awful, wonderful, and undefined, except in the general and extenſive etymology, that he is the great and ſole author of nature. In the ſeveral ages of the world, as is collected from the voluminous folios of hiſtory, ancient and modern, ſacred and profane, an idea has conſtantly prevailed in the mind, raiſing it to contemplate and adore, under various characters, ſome ſuperior being, as an humble teſtimony of regard and thankſgiving to him of whoſe perfection we ſpeak, but of whoſe entity we have hitherto been altogether ignorant. Idolatry, revelation, chriſtianity, and mahometaniſm, have been founded on the idea of a God: polytheiſm was the conſequence of the firſt, among the Pagans; theiſm of the ſecond, among the Jews; the doctrine of faith and regeneration of the third, among chriſtians; and the hope of ſenſual and eternal joys of the laſt, among the diſciples of Mecca.

Human nature has ever been the ſame among all; and man in one age, whether Pagan, Jew, Chriſtian, or Mahometan, has been the ſame in another. His motives, his actions, have ever been uniform, and man in one country has been but man in all the countries of the diſcovered world.

When philoſophy expanded the human mind, and prepared it for improvement in knowledge, the errors of preceding ages and departed men were detected and expoſed. Polytheiſm gave way to theiſm; which, from a pretended holy neceſſity, was confirmed in revelation by a ſingle God, and theiſm and revelation were illuſtrated and exemplified by chriſtianity; which however eſtabliſhed, as a means of grace and the hope of glory, philoſophy has weakened its ſpiritual pillars, and brought diſcerning man to conſider religion but as a bridle, of which he ever ſtands in need, and which, as reſpects his conſtant and immediate communion with the Almighty, has ever confined him to his welfare and advantage. Enthuſiaſm, and the belief of incredible things, has, on the contrary, drawn his mind as to an intenſe focus, even into madneſs and miſery, which originating in ignorance, have conſtituted ignorance the mother of devotion. The mind inflamed, perplexed, and diſordered by contemplating on eternal happineſs and wretchedneſs, which revealed religion teaches men conditionally to expect, they have grown inſane between hope and fear; or when unſuſceptible of either, they have by their weakneſs grown pious and devout. But philoſophy rendering the apprehenſion of reproach ridiculous,

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and giving wide room to the freedom of enquiry, the ignorant only are left to enjoy the praiſes due to their devotion, and the wiſe encouraged to explore, before they worſhip the nature of the object that deſerves their devotion. In this they diſcover perhaps nothing, and in return bring upon themſelves a popular, a rude, and an ignorant reflection, that they are infidels. The luſtre of their minds is not to be eclipſed. Admitting nothing as an object of belief that to them is incredible, they walk undeviouſly in the road of truth, and virtue is their conſtant companion. They are ſenſible that to worſhip nothing, is folly in the extreme; and anxious to learn or conceive of ſomething that ever deſerved adoration, they refine upon it, and reſolve, according to Mr. Locke, that the idea of a God conſiſts of ſomething exiſting from eternity, on which depend all other knowing and finite beings, as well as worlds in groſs, and all things in them.

Religion therefore, in its moſt important ſenſe, is derived from our wonder at and praiſe of the works of nature, as iſſuing from this exiſting eternal mind, which we invoke by the venerable name GOD; the very word religion implies a Deity, to whom it is ultimately directed; a man being only religious according to his belief of a God thus conceived of.

The attributes of God, as the ſole founder of the univerſe, are neceſſarily omniſcience, power, and perfection. All his works are ſubordinate excellencies flowing from him. To adore him as manifeſted in us, and the reſt of his creatures, is natural religion, and we believe in him from

the knowledge of ourſelves and them, which is the only rule of our being religious *. The idea of his perfection and goodneſs animates us to reflect on his eternal wiſdom and juſtice, from whence proceed the little of our own; and we have a knowledge of virtue, religion and right, by our very nature, which ſuggeſts to us that theſe conduct us to happineſs, and that the nearer we relate ourſelves to them, the happier we ſhall be. Thus God, the univerſal Creator, is the great and glorious object of religion; he is the rule of it, and the reaſon is teſtified in our intereſt and pleaſure to adore him as the parent and protector of all good.

This is true religion, be the forms of it what, and as many as they may; and that is the beſt that gives us the juſteſt notion of God and ourſelves, likening us moſt unto him in all his imitable attributes; that moſt purifies our hearts and affections, giving us the ſtrongeſt ſupport in affliction; the moſt ſincere piety in an upright, honeſt, and honourable life, throughout our days of animal exiſtence, and the ſoundeſt conſolation on a death bed.

It is not material whether the Atheiſt exclude the word God, and aſcribe all we ſee to nature, chance, or neceſſity; or whether the Deiſt ſucceed in eſtabliſhing that God is a ſpirit diſtinct from nature, and producing effects by the operation of his will; nor whether he have perſon, affections, or paſſions. It is the moral character only of neceſſity, chance, God, or the deified imaginary forms, which can affect us; for we are wholly determined in the regulation of our religious and moral diſpoſitions by the quantity

* See Note b. 1. ch. 2. p. 25.

of

of good or benefit, which in our opinion is produced by that principle, that being, or thoſe beings which actuate and govern the univerſe. If we obſerve that the world and all the beings in it are formed with wiſdom, that every want may be ſupplied, and every deſire gratified, by an infinity of proviſions, which ſeem to imply the greateſt goodneſs in the being or principle who made them; this will be ſufficient to all the purpoſes of religion*, and nature and her works will appear full of God, into whoſe nature all our enquiries are fruitleſs and vain.

* See among the lectures of the Rev. David Williams.

CHAP. III.

Of Scepticiſm and Faith.

MODERATE, oppoſed to rigid ſcepticiſm, may be compared to ſober reaſoning, oppoſed to enthuſiaſm. It aſſiſts us in the cauſe of truth, while an univerſal doubt but deprives us of the benefit of our ſenſes; the former limits our aſſent within the bounds of probability and experience; the latter leads us into the mazes of inconſiſtencies and error; it renders our ſenſes uſeleſs, or is productive of difficulty. Colours are nothing; the elements of heat or cold are nothing; ſounds are nothing, but as they impreſs the mind, or corporally affect us. Under rigid ſcepticiſm, all our concluſions are imaginary, and univerſal doubt ever will prevail with us, while we give up the evidence of our ſenſes, and ſeek to diſcover what nature herſelf has hitherto, and, very likely, always will conceal from us: for altho' rigid ſcepticiſm has for its beſt ſupport an argument, that no man is poſitively certain that he is ſleeping or waking; until it be proved that no man ſees with his eyes, hears with his ears, or touches with his hands, the whole architecture of rigid ſcepti-

ciſm

ciſm will fall. Imagination is its life and ſoul: the ſenſes affected, affect the imagination; and tho' we really hear and ſee, we may only think we do ſo, without there being any object to ſtrike our eyes or ears. It is impoſſible for us to doubt, and not to doubt at the ſame time and of the ſame thing. If imagination repreſent to us in a dream that we did a particular act, which we could not do when we are awake, and we afterwards actually do it out of a dream, we may doubt of the certainty whether we were awake or aſleep at the time our imagination ſeemed to convince us of either: but there can be no doubt of the fact, that we are ſenſible of the ſtate we are in, and that a mere viſion, or ſomething conceived in the mind's eye, is diſtinguiſhable from a real experienced action: rigid ſcepticiſm can go no further than to urge, that we have the ſame certainty of our being awake when we ſleep, as we have that we are *truly* awake; becauſe the experience of the fact of our being aſleep, perſuades us in the caſe of dreaming, that we are awake; but when we compare the experience we have of being awake, with that of being aſleep, we find it clear, and determined by the ſtrength of our reflection, which has little or no place while we ſleep or dream: it awakens us the inſtant it begins to operate, and convinces us we are awake, when we are really not aſleep. Thus mad people, in their madneſs, never reflect, and conſequently are ignorant of their diſorder; bring them to reflect, and reaſon will prevail in their minds; ſo long as the power of reflection laſts, it will diſſipate all their delirium. Moderate ſcepticiſm then may be defended on the principles

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of prudence and wiſdom, which teach us to govern our aſſent by the beſt evidence that can poſſibly be obtained: but rigid ſcepticiſm, as it promiſes no good, and is an enemy to ſcience, ought at all events to be rejected, and left to the enjoyment of thoſe men, who, as Lactantius obſerves, have ſwords but no ſhields—*Gladium habent, ſcutum non habent*; and who overcome, by their ſubtlety, all their opponents, but are deſtitute of ſolutions in defence of themſelves.

The inſtances of rigid ſcepticiſm are innumerable, and they are not leſs unworthy attention in the ſciences than in phyſics, which are yet as uncertain as ever: this uncertainty probably made Ariſtotle to ſay, that nature was the very devil—*Natura demonia eſt non divina.* She certainly appears all enchantment; bodies are familiar to our touch, tho' we are ignorant of what thoſe bodies are compoſed; colours are conſtantly before our eyes, but we know not whether they be produced by particular reflections of light, or whether they exiſt in themſelves, and belong to the objects that bear them; we know not what light is, and are highly perplexed in the article of viſion, which in a moment tranſlates a ſtar in the heavens down to our eyes on earth, notwithſtanding it is thouſands of miles diſtant from us, and exiſts at the ſame time in the immenſity of ſpace.

Hence rigid ſcepticiſm is but an artifice, a deluſion, and a whimſy formed creature of a reſtleſs and unſatisfied mind, which paſſes common things as undeſerving notice, and mortifies itſelf becauſe God and nature do not manifeſt their

their ſecret entities and operations to man; a little, vain, buſy worm, who employs himſelf in univerſal doubt, which either vaniſhes in the inveſtigation of a reaſonable being, or remains to be exploded as idle, preſumptions, and abſurd.

Experience is the foundation of knowledge, as knowledge is of virtue: it renders things ſelf-evident, and makes us comprehend them without doubting, which may as well be conceived by the vulgar and untaught, as the wiſe and learned, between whom the only difference is, that the former may do it in common language, the latter in terms of art, which are the leſs agreeable, becauſe the leſs intelligible. Thus our ſchoolmen and rigid ſceptics, after all their wiſdom, know leſs than common men: a fiſherman knows ſomething of the property of fiſh; a pilot, of the winds and tides; a ſportſman, of his game; and a huſbandman, of his grain; but a ſchoolman, or a rigid ſceptic, knows only how to raiſe his doubts, and to overturn, where he cannot ſet up. We have ever heard the ſame clamour, the ſame arguments, and obſerved the ſame obſtinacy of opinion among rigid ſceptics; yet the proſpect of victory and triumph in the cauſe of truth and certainty, is remote and dark. This affords a defence of divine revelation, which deſerves equal belief with every thing that is equally credible, or incapable of human demonſtration. If we are ſenſible that our diſcoveries in philoſophy are trifling, why ſhould we eſtimate our diſcernment ſo highly, as to deſpiſe the myſteries of Providence, becauſe we cannot ſolve them? Nature herſelf abounds in myſteries, and if

we

we benefit little by our reaſon or experience after our ſearch into the former, why ſhould we not bend obediently to the latter? Our ignorance in phyſics ſhould humble our enquiries into the ways of Providence, and make us at leaſt reverence what we cannot underſtand. If we ſpeak with confidence of Cæſar and Pompey, and admire their exploits, why may we not believe in the actions of Moſes or the Apoſtles? Faith, in reſpect to ſupernaturals, like moderate ſcepticiſm in reſpect to phyſics, if equally limited, will lead to content and happineſs; but univerſal doubt will bury us in obſcurity and deſpair. Would we diſtinguiſh between an obedient faith in all the myſteries of Providence, and of all or any of the various modes of religion on earth, we ſhould be careful to avoid thoſe extravagancies which an unbounded and inconſiderate faith will produce. Moderate faith, therefore, like moderate ſcepticiſm, will lead us to venerate the Deity in his works, and to believe in him and his operations, altho' himſelf and them are beyond our ken *. We ſhould preſerve a medium in our minds between univerſal faith, and univerſal doubt: it is not leſs abſurd to doubt the evidence of our ſenſes, than to believe implicitly in miracles; we know as little of the immenſity of ſpace, as of the myſteries of Providence and divine revelation: but it does not follow, that becauſe we are ignorant of the one, we ſhould believe in the other. Truth may be hidden and diſputed, but it can never be changed; we may madly doubt the little we know, or confide in falſhood, or any thing

* See Note p. 188.

which

which may poſſibly be ſo, oppoſed to probability. To believe a myſtery, becauſe we cannot remove it, is like a blind man ſitting in judgment on colours; and to doubt of manifeſt truths, or believe in what ſurpaſſes our comprehenſion, is wilfully to lock up our ſenſes, and ſay, we can neither hear, ſee, or feel; or to give them ſo wild a ſcope, as to believe in every thing we neither felt, ſaw, or heard: it is the medium between theſe oppoſite extremes, humbly to give way to reaſon; which, without experience, is but an indifferent guide. Experience enables us to draw concluſions concerning real exiſtence and matters of fact, and to diſcover the relation of cauſe and effect. Nature keeping us at a great diſtance from all her ſecrets, it is the utmoſt extent of human knowledge to ſolve particular effects into a few general cauſes; but we ſhall never diſcover the cauſe of theſe cauſes, and ſhall be blind to it in ſpite of all our induſtry: from whence we may infer, that as experience is the foundation of all our reaſonings, which, without it, are nothing, we muſt content ourſelves with the knowledge of effects as they preſent themſeves to us; and ignorant, as it is probable we ſhall ever be of primary cauſes in phyſics, all we can do is to admire the effects of thoſe which are ſubordinate, and thence improve our veneration for the great author and ſole cauſe of all, as the divine architect of our terrene world, and its inhabitant man, whoſe faith in the Almighty Deity will be encreaſed in proportion to his knowledge, and whoſe true religion will be formed on thoſe principles of virtue and goodneſs, acknowledged and approved by all mankind.

CHAP.

CHAP. IV.

Of Hereſy, and Toleration.

IF if it be poſſible that there is in nature an inſtance wherein either reſtraint or puniſhment cannot be applied, it is in the caſe of hereſy; the mind is a *territory* of vaſt extent, occupied by ideas, ſenſations, judgments and opinions, airy and unſubſtantial, over which no foreign dominion can poſſibly be maintained; force can neither ſubdue their operations, nor change them; the power of thought is co-equal with our exiſtence, it matures with ourſelves, and neither confinement nor puniſhment can interrupt or affect it. In its ſilent effects it is out of all reach, and the proprietor is the ſole maſter of it in ſpite of tyrants and the reſt of the world. To think is a liberty none can diveſt us of—it is no hereſy—it is every thing within us, but nothing without—the avowal or declaration of our thoughts are reſtrainable, and the avowers of them puniſhable by the will of tyrants, and the abuſe of power; but the freedom of the mind if reſtrained in the communication of its objects, is reſtrained in the means of improving its own happineſs, and the happineſs and wiſdom of others; tyrants may impoſe falſehood for truth,

and

and forceably eſtabliſhing it, ſtop the current of that information which leads to open the underſtanding, clear it of errors, and prepare it for the reception of knowledge. To reſtrain this communication, although it be not to impoſe particular thoughts on the mind as true, which may in reality be falſe, is to command the practice of ſuperſtition, and to encourage folly. It is a deſpotiſm of opinion purpoſely impoſed in declaration and avowal by an unjuſt power, which draws its force from the pliant ſubmiſſion of the people, over whom it is exerciſed as a curſe. Tyrants, jealous of the conſequences of wiſdom and truth, reign only in a falſe glory, while they are repreſſed and confined. The empire of force over the opinions of mankind, from whom it only obtains diſſimulation, followed by ſecret contempt, is odious, and though it contributes to arbitrary power, or the ſupport of it, it makes the acquiſition painful, by the fears and apprehenſion of internal danger, and rebellion; it obtains but a falſe ſubordination, ſuperinduced by compulſion and terror, not love, or a free and voluntary inclination; yet tending in the extreme of poverty and riches, force and weakneſs, which it produces, to elevate the tyrant on the fall of the people; to aggrandize him on their abaſement, and to draw their force to himſelf, and leave them feeble, it ends in miſery and ſervility one ſide, grandeur and wealth on the other, making the ſtate to contain but two ſorts of men, the governed and the governors, the tyrants and ſlaves; the one by a falſely aſſumed power, arbitrarily rule the other as a property, who being robbed of their natural right in that power ſuffer miſery in return for it.

To

To avow and declare the objects of our thoughts is the firſt right of ſpeech granted us by nature and reaſon, be thoſe objects what they may. It is our actions only that may require limitation and co-ercion, and when *ſpecifically* prohibited by the ſupreme ſenſe of a ſtate freely governed, an avowal or declaration of opinions in their favor, if tolerated, that is *ſuffered by any legal act*, would be repugnant to the prohibition of their objects, and productive of rebellion, with all the ill effects of private opinion, diſorder, and contention, which it is the very buſineſs of the Supreme power to correct and ſtifle. Toleration by the laws of nature is univerſal, becauſe nothing is naturally wrong; but many actions being artificially ſo, in civil ſociety toleration is there only an empty unmeaning ſound. In a free ſtate all men may avow and teach crimes as well as virtues. It is a right of nature; but when crimes are prohibited by the civil ſtate it is not a neceſſary right of nature to avow and teach the principles by which they may be committed *. If it were, every villain that had an intereſt in avowing and teaching crimes, (and many villains there are in all ſtates) would encreaſe inſtead of leſſening the frequency of their commiſſion. *Nature tolerates, but civil ſtates prohibit*; the rules of the former are perfect, as are the rules of the latter, ſo far as regard *the greateſt happineſs of the greateſt number*; no right of nature is neceſſary that militates againſt ſuch happineſs. It is contradictory, and if exerted would oppoſe a natural right merely to avow and teach any thing to the civil right of reſtraining any thing, and leave the latter to puniſh conſtituted vices *when com-*

* See Introduction p. 7 and 8.

mitted,

mitted, and the former to lead men into their commiſſion *.

It is a rule in the law (as hath unavoidably been often mentioned in this eſſay) than which nothing is more truly logical, that whatever in *Society is wrong, or interrupts the greateſt happineſs of the greateſt number*, ſhould if poſſible be prevented, and not puniſhed; and it is the duty of a good magiſtrate not only to execute the laws, but to do every thing to prevent their violation; oppoſe the beginning of ſocial evil, and puniſhment may be the leſs neceſſary; but let it on the other hand be begotten in the mind, delivered, educated, and trained to its utmoſt maturity, and it will conſtantly employ the magiſtrate by ſetting the law at defiance. Mankind are ſufficiently free in ſociety, in thinking and avowing what they pleaſe, but they would be wretchedly free indeed were they not to be deterred by all poſſible means from the encouragement, teaching, and committing criminal actions. If the convenience of mankind induce them to make laws for preventing new invented injuries, they ſhould be taught to obſerve them ſacredly and reciprocally, otherwiſe, liberty would become a curſe, for though the rules of nature are perfect, men would be nevertheleſs puniſhed in *civil ſociety*, for all their conſequences, and being *too free*, they would indulge principles and opinions conducting them to actual evil, and puniſhment would be their only reward.

All things are tolerated; nothing by law; civil ſtates ſilently and paſſively bear with every thing they do not actually prohibit; and they are ſuppoſed to prohibit no action until proved by

* See preface and introduction.

experience to be *injurious, and ſubverſive of the greateſt happineſs of the greateſt number*; their prohibiting any action that is ſo, is virtually prohibiting the teaching any action, the commiſſion of which would be criminal. The laws being thus *an intolerance of criminal actions*, (as conſtituted ſuch by man) they may be legally ſaid to be *untolerated*, while all other actions and opinions in general, being left free and unſhackled, are philoſophically ſpeaking, enjoyed by *univerſal tolerance*, independant of, and unknown to any law whatever.

There are no reſtraints of private opinion, or free enquiry, the liberty of conſcience, or the avowal of all its objects. If the dominion of prieſts, and the hierarchy, eccleſiaſtical creeds and ſpiritual liturgies; war with the ſimplicity of truth, and even with the ſpirit of the goſpel, they are regarded only by the credulous and vulgar, who are left to themſelves to admire them. Syſtems of faith are the harneſs of weak and pliant minds; myſtery and deceit are their foundation, and they lead the ignorant into political error, and pernicious ſuperſtition. But theſe are reſerved only for knaves and fools who enjoy or are miſerable under them, from that ſpirit of toleration which, making no exceptions of ſects or parties, tolerates all, in points of conſcience however limited politically in itſelf under eſtabliſhed liturgies. If thoſe truths in which all chriſtians, or all men agree, were never to be ſhackled by the narrowneſs and tyranny of policy; if no liturgy but what is compoſed for them according to Chriſt's own example were to prevail, hypocriſy and religious zeal would no longer ſeparate mankind, but all would join as brethren in the great

great cauſe of God and themſelves. Such a catholic liturgy would deliver them from the diſtracting enmity and diſcords of religious oppoſition; it would open to their view the dawn of that clear day when animated by one pure ſpirit of love and benignity, their only contention would be in acts of benevolence and generous devotion, unimbittered with rancour, obſtinacy and enthuſiaſm.

Were the ſubject of toleration revived by the Engliſh legiſlature, they would probably diſtinguiſh between a paſſive ſufference, and an active licence. At preſent the exempting act, vulgarly and falſely called the act of *toleration*, ſounds to the vulgar ears as if the legiſlature had the ſole power under heaven of granting privileges to mankind, which nature has given them with their exiſtence by tolerating one ſet of men inſtead of all men. But this is erroneous, and all that was legally meant by that act is, that after certain laws had neceſſarily paſſed with a view to protect the nation againſt danger from a certain body of incendiaries, it was thought wiſe that a body of peaceful ſubjects, who diſliked prelacy, and ſeparated for conſience ſake, ſhould be exempted from them, as by the toleration act they are, which would alſo have taken cognizance of the papiſts had their conduct been equally loyal. It being the reverſe, inſtead of repealing the laws againſt them, about twenty years after the revolution, additional penalties were preſcribed, as by 11 and 12 K. W. the act of toleration therefore was ſo far partial, that it only repealed the acts againſt proteſtant diſſenters in general, and allowed privileges to their *pretended* clergy of adminiſtring the chriſtian doctrine their own way, and of freedom from pariſh offices,

while all thoſe acts remained in force againſt papiſts.

So that however intolerant the civil or religious principles of the Engliſh government may have heretofore been, as the various effects of particular and various cauſes, from time to time ſince the reformation, it appears that toleration is unlimited reſpecting all matters of conſcience which is intirely free, while nothing is limited but the actions of men, and that by themſelves for the benefit of all.

This brought the late Sir W. Backſtone to ſay that "every thing is now as it ſhould be reſpecting hereſy" (which it certainly is not, becauſe the very name ought to be forgotten, and no thought, opinion, or the avowal of it to be deemed deſerving of it) and that "all of us have it in our choice to do every thing that a good man may deſire to do, and are reſtrained from nothing, but what would have been pernicious to ourſelves or fellow ſubjects *."

* Book 4. ch. 4.

CHAP.

CHAP. V.

Of Religion in general.

IN the firſt ages of the world the only government among men was theocratical, and gods their only kings: they conſidered that making a maſter of a fellow creature was unnatural, and what the pride and dignity of humanity ought not to ſuffer; each political ſociety had a deity at its head, and polytheiſm was the conſequence; they warr'd not on account of religion or their ſpiritual duty to their deified kings, but obeyed them in obeying their laws; political and religious things were then the ſame. The adoration of all nations was divided among different deities. When they fought it was for themſelves, not their gods of whom they invoked ſucceſs. Religion being extended by the Romans with their empire, who ſometimes adopted the deities of the vanquiſhed, they poſſeſſed themſelves of a vaſt multiplicity of gods and religions. As theſe did not much differ, paganiſm and judaiſm prevailed throughout the world until Chriſt eſtabliſhed a *ſpiritual kingdom on earth*, which ſeperating the religious from the civil ſtate, occaſioned thoſe many diviſions which have embroiled chriſtianity. The pagans and jews

regarded the chriſtians as rebels, who under a falſe ſhew of humility wanted only to make themſelves independent, and uſurp that authority, which in their weak and infant ſtate they pretended to reſpect, but which on their encreaſe would occaſion their perſecution.

As chriſtianity matured and multiplied its votaries, the meekneſs of it changed into ferocity; its ſpiritual kingdom became a temporal one, and the airy head of it (though divine) became worldly; its lowlineſs reſpecting the bliſs of a life *to come* grew tyranical in *this*; between a double power of ſpiritual and temporal, ſtruggles aroſe for juriſdiction, and a conſtant combat whether prince or prieſt was ruler. In ſome nations they were ſo conjoined that they governed as a conſolidated character, while others contended for the antient ſyſtem of theocracy; in ſome countries the two powers reigned independantly; in others they were ſeperated. The pagans had no clerical body in their theocracy, nor was any neceſſary in their communities. If in chriſtian ſtates none had been eſtabliſhed, what cruelty and barbarity would have been avoided! or had any been promoted for the improvement of religion and the inſtruction of man as *a kingdom of peace*, independant of the ſtate, but ſubject to its general ſuperintendancy to prevent diſorder by ſpiritual faction, how much of human blood had been unſpilt!

If chriſtianity on its eſtabliſhment had driven away paganiſm and judaiſm; and the pretended primitive admirers of either had ſpared their cruelty and injuſtice in puniſhing what they called infidelity by robbing peaceable men of their property, and expelling them their country by ſlaughter,

ſlaughter, plunder and violence, it would have been received throughout the world. As Beccaria ſays, Europe would not have been covered with blood, nor thoſe horrid piles raiſed, from whence, midſt clouds of whirling ſmoak, the groans of human victims, the crackling of their bones, and the frying of their ſtill panting bowels were a pleaſing ſpectacle, and an agreeable harmony to a fanatic multitude. Had chriſtianity been properly underſtood in the beginning, the meekneſs and humility, the mildneſs and benevolence of Chriſt would have been ſtudied as an example to acquire virtue, and peace would have been diffuſed among mankind whereby they would have been made happy in themſelves, and have rejoiced in their efforts to make each other the ſame by perſuaſion, not force and perſecution, which in their nature are unfriendly to them; they would have adored Chriſt in word and deed; but making themſelves avengers, not prieſts of his indulgent precepts and doctrine, and employing them as a means of rapine and murder, they diſgraced his glorious name, and in the wildneſs of their tyranny conſtituted the name of Chriſtian odious and barbarous. In the ardour of their zeal they made chriſtianity aſſiſt in their tyranny which they rendered ſyſtematical by the eſtabliſhment of a chriſtian church, whoſe biſhops became fathers of chriſtianity, and ruled their children with a rod of iron. Barbarity and ignorance, according to Puffendorf, encreaſed their authority, which as the Roman empire declined overſpread the weſtern part of the world. Superſtition impoſed on the weak and ſhort ſighted, who ever apt to receive the impreſſion of it, theſe chriſtian emiſ-

ſaries encreaſed to purſue and forward their deſign of an arbitrary predominancy; they ſucceeded in their impoſitions, robbed the laity of their property, and diſabled them of the power of reſiſtance or ſelf-defence. Thus overburthened they were reduced to ſervility, inſtead of being maſters of themſelves they were ſlaves to others: deſpotiſm proceeded from their ignorance, and by their faith in the infallibility of a man (the Pope) they long remained in darkneſs, ſubmitting to an unjuſt power without knowing it to be ſo.

Religion in its general ſenſe regards the general intereſt of ſociety, and the particular happineſs of individuals; ſo far as it relates to the man it has no altars but private conſcience; ſo far as it relates to the citizen, its forms and ceremonies are peculiar to peculiar ſtates, marked out by the laws, which vary in various communities, and extend not beyond their own churches; this was true religion under theocracy.

In chriſtendom, religion is divided into two diſtinct modes of worſhip, proteſtant and papal; in the Romiſh church it has a head diſtinct from and ſuperior to the ſtate; in the proteſtant church the majeſty of civil is the majeſty of religious affairs, and church and ſtate have but one head; it is here of uſe in uniting to it a reſpect for the laws, and by making its votaries reſpect their country; they ſerve the ſtate in their ſervice of the church; and by thus ſerving both unitedly, they ſerve their prince as high prieſt and chief magiſtrate; to violate therefore the laws is impious, as well as rebellious; to offend them is to fly in the face of heaven, and to provoke the anger of God, by provoking the prince who is the firſt miniſter in holy affairs as well as temporal

ral ones; yet this is not idolatrous or ſuperſtitious; as citizens, it is political, productive of uniformity in the ſtate, as an eſtabliſhment, and promoting an obedience and deference to the laws, which are ſuppoſed to be better obſerved by religious than irreligious ſubjects. Blood has nevertheleſs been ſhed by thoſe ſtates who pretended it was righteous to ſpill it when God was worſhipped contrary to what was called eſtabliſhed rites; but this happened only in dark and ignorant ages, before the birth of philoſophy, or liberty began to rear her head.

Chriſtianity, although the modes of it were divided, the one inſeperably connected with the ſtate, the other forming a diſtinct ſtate of itſelf, has in both its inconvenience; in the former it is tyrannical, in the latter viſionary; the head of a ſpiritual kingdom aſſumed a power from heaven itſelf to overawe and direct all temporal kings, as ſubordinate to them; chriſtianity having no relation to the political ſtate, but dividing men from it, more than attaching them to it, appears to be of no other uſe in ſtates than in making mankind the children of one God, and brethren immediately from him, which changed polytheiſm into deiſm during the life of Chriſt, who was properly his vicegerent; though his power only extended to the ſoul, not the perſon of a man, it drew down the jealouſy of temporal kings, leſt it ſhould be extended to the latter, and then to princes. His meekneſs and humility certainly weakened the force of the temporal ſtate, by weakening the minds, and weaning of the ſubjects from it, which probably, and becauſe it tended to univerſal, not partial dominion, brought on his crucifixion and death, with all the

the ſubſequent perſecution of his primitive believers under the Romans.

It would be impoſſible to maintain pure univerſal chriſtianity in ſocieties *of men*; it is fitted only for gods, and is therefore only ſuitable to their kingdom whoſe inhabitants are ſpirits of equal intereſt; in a ſpiritual kingdom all its ſubjects are alike; their objects are celeſtial, and when obtained they are the inheritance of an eternal not a finite world, where imperfection creates the ſtrongeſt ties of connection, and only admits of chriſtianity as an auxillary to inculcate a reſpect and due ſubmiſſion to its ordinances, not ſo much out of *fear of worldly puniſhment*, which of itſelf does not anſwer its purpoſe, as out of the apprehenſion of that which is ſpiritual, and eternal; otherwiſe, were the kingdom of Chriſt univerſally to prevail, it would ſupercede all others; the candidates for it in their holy fervors would grow indifferent as to the intereſts of the citizen; they would diſregard all affairs in that ſtate which nature placed them in; by deſpiſing it, and endeavouring to deſerve a place in a divine one hereafter, they would be a ſociety of competitors for an imaginary kingdom, and they would forget that they were tenants of a real one, which if properly taken care of, would diſſipate that gloomineſs of their minds, leading only to miſery and deſpair, and ſubſtitute hope and induſtry to encreaſe their proſperity in the world they poſſeſs, as well as prepare them for the glory and reward of that which may follow.

But if ſuch a pure univerſal chriſtianity prevailed, and every member of Chriſt's kingdom (which he declared was not of this world) were not equally ſincere, which from the nature of man is impoſſible, hypocriſy or cunning might be

be employed by one or more individually, or in a party to make a prey of the reſt, and bring about a revolution. By effecting equality their force would be divided, and power accumulating ſomewhere, would break forth and oppreſs inferiors. Political ſtates were formed before chriſtianity was known; mankind had lived in ſociety for ages under theocracy, and proſpered. They ſuſpected the impoſition, or the viſion of eſtabliſhing *a nation of gods*, and they violently removed the promoter of it, for the ſake of men.

Rome and Sparta, had never been kingdoms if their manly ſubjects had been pure chriſtians. Leonidas would have died in ſilent deſpair. Fabius would have ſighed and prayed; and deſerts have been the only worldly empire; as pure chriſtians they would have been ſlaves and cowards; as men only they were free and brave. The croſs, as Rouſſeau ſays, put the eagle to flight, and Roman valour diſappeared.

Political ſtates conſider religion but as it may inſpire men with a regard for their civil duty. They lodge a power in their ſovereign to promote ſuch an inſpiration for a general utility, reſpecting their *actions*; but in regard to *opinions* they may entertain what they pleaſe, and avow them under theſe ſtates if they be truly free; they are accountable to no one for this, provided it affect not the general good. Such political ſtates regard moral conduct, and the preſervation of thoſe mutual obligations, which men as ſubjects owe to one another; they have no power out of this world, and regarding only the actions of their ſubjects, they regard not their internal religion, or irreligion, provided they diſcharge their duty as citizens and men, which they do by conforming to the public ordinances, obeying

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the laws, and enjoying their private opinions, and the avowal of them in peace and good order. In this they are free from impunity, and although any part of them ſeparate themſelves in matters of public opinion to which the ſtate requires them to ſubſcribe in *a public character*, they are ſtill ſubjects, ſo long as they obey the laws, as naturally born, and preſerve their political and conſtitutional allegiance.

Were a man admitted into a ſociety on no other terms than on ſubſcribing to its public opinions, he might do violence to the liberty of his conſcience, and ſacrifice to falſehood, as well as truth; on the other hand, being born in that ſociety, which if it determine that a profeſſion of faith be neceſſary, the ſovereignty may aſcertain it, in the name of all the ſubjects, but without compelling them to ſubſcribe it *. It has no right to baniſh them, much leſs to put them to death, as Rouſſeau contends for. Let them be ſeparated from all public affairs, and obey the laws as good private ſubjects, but neither baniſh them nor execute them for differing in opinion from the political tenets of the ſtate, in which they are natural born ſubjects †. Let religious

* See a diſcourſe on the liberty of conſcience by G. Noodt, tranſlated by A. Macauley, and publiſhed by Dilly.

† Lord Shafteſbury has wiſely deſcribed the name of Sceptic, to import that ſtate of mind in which every one remains on every ſubject of which he is not certain, for that he who is certain, or preſumes to ſay he knows, is, whether he be miſtaken or in the right, a dogmatiſt; conſequently no opinion can be certain, nor no man can be ſure that any is true, all opinion being founded in faith, ſubject to various ſpeculations, memories, judgments and criticiſms; and as it is impoſſible for a man to frame any certain or poſitive opinion of his own, which always totters, and waves in proportion to the knowledge he acquires, it is neceſſary that he ſubmit, and truſt to the opinions by law eſtabliſhed, however he may prefer his own. *See among Shafteſbury's Miſcellanies; and chap. 3. b. 2. of this Eſſay.*

affairs

affairs be ſo united with the civil, as to incline the ſtate to happineſs and proſperity, activity and induſtry; let it aſſume ſovereignty in the church as a lay magiſtate in order to prevent the tyranny of a ſpiritual chief, but let it alſo ſuffer all its ſubjects to ſeparate and form churches of their own in ſubjection to the national church, and to worſhip an univerſal God in the way that gratifies them moſt. Let one national eſtabliſhed religion prevail, and all religions be unreſtrained *. This would prevent perſecution, and man would be truly free. It would conſtitute religious liberty; ſubjects would be happy in proportion to it, and purſue truth with ſpirit and reſolution †. They may deſerve well of each other by their *actions and conduct*, and live in mutual peace independantly of their private opinions, although Mr. Rouſſeau ſays, it is impoſſible it ſhould be ſo, by men we firmly believe devoted to damnation; to love them, ſays he, is to hate the Deity for puniſhing them, and that therefore it

* See Warburton's Alliance between Church and State.

† Spiritual and temporal affairs are conjointly ſubordinate to the ſupremacy of a free ſtate. Were the clergy diſtinctly ſupreme in all matters of faith, they would neceſſarily govern their country abſolutely. By taking poſſeſſion of the conſciences of men they would more effectually command their obedience than the civil magiſtrate. Their impious pretentions of ſaving and damning ſouls to all eternity would create a greater fear and dread than any civil power on earth, that has no pretentions beyond this world. The clergy therefore are properly dependant on the legiſlative authority, under which they are appointed, and ſubject to whatever reſtrictions it pleaſes. They are protected and maintained by it to the end that the miniſtration of the chriſtian doctrine according to the ceremonies of the national church may influence the ſubject to obey the laws he has ſhared in making, and thence anticipate the duty of the magiſtrate.

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is abſolutely neceſſary to perſecute or convert them. It is rather loving the Deity to love them for what they are by their actions and demeanor; but to perſecute them for differing in opinion from us is to inſult the Deity, and diſhonour ourſelves; it is to oppoſe truth, and encourage falſehood and enthuſiaſm; converſion hence would be fraudulent, and men never begin to convert until deſpiſing the principles they teach, they have a ſecret intereſt in converting others. Thoſe truths ſublime, the knowledge of which relates not at all to the ſtate, may break in upon the mind, and enlighten it; accordingly as they poſſeſs and enjoy liberty and eaſe they will ſearch them compoſedly and benevolently; but attempt to prove by perſuaſion, art, eloquence or otherwiſe, that particular opinions are only true, and zealouſly teach them with a view to converſion, and their virtue impairs by raiſing a jealouſy that there is ſome ſecret purpoſe hidden in the outward concern of thoſe who endeavour to convert; religious perſecution is ſuſpected as they encreaſe in power and conſequence, when inſtead of converters they become maſters; civil affairs then bend to their purpoſes, kings are dethroned, and religious tyranny renders them their ſervants. What was it in Cataline or Cromwell but hypocriſy in favour of particular tenets and opinions that procured their uſurpation; they changed thoſe they firſt worſhipped as maſters or joined as convertors into ſlaves, and employed them as inſtruments to their precarious will.

The abſurdity of ſupporting ſeparate national religions made it firſt neceſſary to ſuffer opinions, and their avowal by all who ſeparated from the ſole eſtabliſhment for form's ſake, while they bore

bore true allegiance to the ſtate, conducted themſelves according to law as citizens, and breathed that ſpirit of indulgence to others they enjoyed themſelves.

Mankind were better diſpoſed for government and their own happineſs under theocracy and judaiſm than chriſtianity, which little agreeing with the enterpriſing ſpirit of political ſtates drew them entirely from its intereſts. By collecting all their attention to a kingdom *hereafter* where eternal happineſs would be found, it ſequeſtred mankind as in a deſart, and driving them out of civil, called them into religious ſocieties, which diſdained the habits and practices of men in civil or worldly purpoſes, and ſacrificed its whole devotion to the purpoſes of heaven. It is therefore no unreaſonable preſumption to ſuppoſe that the Judæans fearful of the conſequences of chriſtianity more than out of enmity to Chriſt, reſolutely put him to death as an impoſtor, ignorant that ſuch an example inſtead of abating the ardor he had inſpired, would but encreaſe it, by encreaſing a zeal for chriſtianity, and occaſion that horrid effuſion of blood, which, thoſe who thought they merited the kingdom of Chriſt in *a life to come* only as they extirminated their inoffenſive fellow creatures, conſequently produced.

We may boaſt of chriſtianity as we will, but its primitive votaries were undoubtedly as intolerant perſecutors as ever have been known. The kings of Babylon ſubdued the jews for the ſake of converting them; chriſtians conquered infidels, and plundered them; they ſpread terror by their cruelty, and encreaſed a belief in Chriſt through the fear of civil puniſhment; they drenched their altars with human gore, with a

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view to terreſtial profit. From the cruſades which ended in the conqueſt of the Saracens, the chriſtian powers precipitately fled from the old to the new world. The lands in Judea being rendered holy by ſlaughter and devaſtation, the diſcovery of a richer country brought down their vengeance on the peaceable inhabitants, for endeavouring to ſecure from chriſtian invaſion their property and lives. Such were the ravages committed among them, that the name of chriſtian was a name of terror; and though chriſtianity pointed to a world *to come*, where none but chriſtians ſhould dwell, it was a kingdom, in the eyes of individuals, rendered terrible by thoſe who profeſſed to inherit it. After the butchery of millions of human beings by Spaniſh cruelty in the tranſmarine world, where war and waſte were ſpread under the auſpices of chriſtianity, well might an Indian prince, on his death bed exclaim to a chriſtian prieſt, who was ſent to convert him, telling him he would then go to heaven, or be conſigned to eternal torment, that *if the Spaniards went there he would rather go to hell*; for ſuch was the barbarity, more than ſavage, of the Spaniſh chriſtian invaders, that neither the cries of the innocent children, nor the ſubmiſſion or conqueſt of the unoffending natives could repreſs their thirſt of blood. Chriſtianity was their watch word, and they glutted themſelves in their wicked purpoſes, under a pretence of ſerving Chriſt, and doing honour to his life, ſufferings and death, by actions which made his name abhorrent, but his believers execrable.

Theſe were the effects of chriſtianity; as perſecuting, if not more ſo, as any known under more immediate governments of God, the treatment

ment of the jews under their Babyloniſh captivity not excepted; whereby it may be imagined that the holy doctrines of Chriſt, (in themſelves admirable above all) inſtead of ſoftening the ferocity of men, and by drawing their attention to a world *to come*, made them more ſavage, and furniſhed them with the means of enriching themſelves at the expence of the lives and property of harmleſs and virtuous *infidels*; as if inſtead of a future, the preſent world were to be their only heaven, purchaſed with indiſcriminate and unrelenting fury. Theſe chriſtian plunderers held it lawful to maſſacre and enſlave any people who refuſed upon their ſummons to turn chriſtians, to ſubmit to the Pope in ſpirituals, and the Emperor in temporals. They juſtified their barbarity not only in chriſtianity, but pretending that theſe poor infidels ſacrificed myriads of perſons annually, their only expiation was at the fane of their adoreable goddeſs AVARICE, to whom they offered up, through worldly intereſt, more people than the infidels had ever done before them: and all this ſo lately, as in the fifteenth and ſixteenth centuries; periods, when one would have thought that chriſtian zeal would have abated, from the improving lights of wiſdom in the human mind; and when the falſely pious deſtruction of mankind in previous ages, would either be forgotten, or recollected only to be abhorred.

Chriſtianity commenced in the ages of ignorance; it made its way by the rooting out of infidels, and plundering their poſſeſſions; and it was propagated by fire and ſword. The cruſades, in which many miſtaken enthuſiaſts engaged, and many pretended ones with them, was an example to the Spaniards in the conqueſt and

depredation of Mexico. The croiſaders firſt plundered the holy land, and drove out the natives (Pagans) in Perſia, and Europe, by introducing chriſtianity; all were impoſtors, and alike employed their religion by perverſion of its doctrine, in the antichriſtian principle of violence and perſecution, regarding their intereſts and luſts in this, more than in any world to come, which they could but indifferently merit, by their rapine and horrid behaviour to their fellow creatures here, whoſe only provocation of their wrath was their wealth, and their thinking differently and better than themſelves; in the eleventh century the chriſtian plunderers of Jeruſalem had the plea of ignorance and ſuperſtition; in the fifteenth and ſixteenth the chriſtian plunderers of the new world united with ignorance and ſuperſtition, wickedneſs and plans of temporal advantage; the former gloried in poſſeſſing abandoned territory in Paleſtine; the latter in poſſeſſing gold and ſilver in Mexico and Peru. Territory and ſpecie were the idols of both, and chriſtianity was a righteous robe, in which to conceal and protect their religious zeal, their injuſtice and hypocriſy.

In this manner was chriſtianity eſtabliſhed; and by enriching of princes, it at length became the moſt liberal and bountiful ſyſtem of morals among men. Though tyrannically introduced, and planted throughout chriſtendom, it grew up and ſpread to promote that liberty of conſcience, charity, humility, and good abearance between chriſtians in civil ſocieties, where it was profeſſed, which, while it illuſtrates its own glory and pre-eminence, contributes, properly underſtood, to human happineſs, and the ſupport of civil and religious proſperity,

CHAP.

CHAP. VI.

Of the Progreſs of Religion ſince the Reformation, and of religious Intolerance.

INTOLERANCE firſt raiſed its overbearing head in England, on the dawn of liberty, in the otherwiſe tyrannical and prepoſterous reign of Henry VIII, who oppoſed through vanity and capriciouſneſs, the reformation begun on the continent by Luther, and wrote a book againſt his principles, which obtained him, from the ſovereign pontiff, the title of defender of the faith; the intereſts and ambition, the paſſions and tyranny of this monarch ſoon after obliged him to renounce in his dominions all authority and ſupremacy of the ſee of Rome; and to the indulgence of his luſt, with a contempt of all religion, do we owe that reformation in our church, which, after a ſucceſſion of oppoſite and inflammatory tenets, maintained by various and equally violent and pertinacious ſectaries, ended in the eſtabliſhed hierarchy, and under which, except in the reign of the bigoted James II. we have proſperouſly lived, for now more than a hundred years.

From the commencement of the reformation to the in part licentious, but on the whole liberal

reign of Charles II. * diſſention, faction (civil and religious) prevailed in divers parties; the enthuſiaſm of all like the ignorance, ſuperſtition, and ambition of the primitive and Spaniſh chriſtians, led to civil and political purpoſes; and however inwardly godly any of them were, their worldly intereſts were ever much more regarded, under the fraud and deception of pretended faith.

On the deſtruction of the Romiſh church in England, which was the firſt advance to conſcious liberty, cant and fanaticiſm prevailed over popery, and the vain ceremonies of the papal worſhip; which though then molified by the lenity of the civil power, is, and always has been, ready to break out on any occaſion, where intereſt, novelty, and unlimited liberty, are concerned.

The puritans, ſo called in the reign of Elizabeth, from the affected purity of their manners, oppoſed the ſeverity and ſimplicity of their conduct to the idolatrous ceremonies of the papiſts. They gloried in their model, and would have ſucceeded in a general eſtabliſhment of it throughout England, had Elizabeth not been deſirous and inclined to preſerve the public worſhip as near to the ornaments and ceremonies of the papal church as poſſible. The act of uniformity of prayer that ſhe paſſed, was no ways agreeable to the puritans; they diſliked the epiſcopal order, but artfully concealing their ſentiments, they only objected to certain forms, &c. until by

* The extention of treaſon, as defined immediately after the reſtoration, and the execution of Lord Ruſſell, &c. excepted; and which are defendable only from the violence of the times, and the recency of plots and pretentions againſt the ſecurity and life of the king.

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their contumacy, and the reſentment of the ſtate, the flame was on both ſides confined for a ſeaſon, but burſt out in after reigns, to the deſtruction of the national church and monarchy. Their principles of civil liberty were inimical to the great and boundleſs prerogative of Elizabeth; yet productive as they have been of miſery and bloodſhed, to their violence and reſtleſsneſs, is the ſubſequent freedom of the Engliſh conſtitution in a great meaſure owing. They firſt acquired a majority in the houſes of parliament, at the expence of the power of the Roman chatholics, and then gained an aſcendency over church and king, as an effect of that liberty, which naturally diffuſed on the intolerance of the papiſts, ſet on foot by the imperious Henry VIII.

But although Elizabeth inclined to preſerve the ceremonies of the eſtabliſhed church in oppoſition to the ſecret wiſhes of the puritans, who deteſted epiſcopacy, ſhe was rigorous in exacting an obſervance of them, and puniſhing all nonconformity; ſhe prohibited the worſhip of the papiſts, which had been ſome time connived at *, on account of their treaſonable views, which in ſo early an age of the reformation could not be too ſtrongly guarded againſt. The court of high commiſſion owed its foundation to the papiſts, and their ſuſpicious conduct. It was eſtabliſhed to correct errors, hereſies, and miſdemeanors. Whatever were its ſucceſs in the beginning, or the goodneſs of its purpoſe, it was ſoon proſtituted into a real inquiſition.

* See the ſeveral Statutes of Eliz. James, Charles I. and II. &c. againſt popery and popiſh recuſants.

Elizabeth paſſed other laws * againſt nonconformity, extending equally to the puritans and the catholics; the principle of liberty therefore took root under the cover of puritaniſm, and from the rigor of the law became faſhionable among the people, who began to conſider the reſtraints againſt proteſtant nonconformiſts as intolerant, as thoſe againſt catholics; forcing them, as it were, to attach themſelves to the church againſt their conſciences. They however did not ſeperate themſelves from it, nor openly renounce epiſcopacy; but it is obvious that the reformation, enlarging the freedom of conſcience, and ſtigmatizing the papal creed, inſtead of intereſting the reformed in favour of the national church, promoted a ſeparation from it, by thoſe who gloried in the downfall of the papal power, but ſtill deteſted epiſcopacy, or any other church but their own, which they wiſhed to eſtabliſh in preference to all others, as moſt favourable to civil liberty, and inimical to royal prerogative.

To tolerate therefore the puritans, that is to ſay, to exempt them from the penalties of nonconformity, would have been regarded by all friends to the ſtate as an enormity; and had King James, Elizabeth's ſucceſſor, granted them ſuch a toleration or exemption, moſt likely he would have been hated for it, as being thence indifferent in the cauſe of religion, although they maintained, that they themſelves were the only pure church, and that no other ought to be ſuffered.

* See 1 Eliz. ch. 2. ſ. 14---23. Eliz. ch. 1---29. Eliz. ch. 6. 3 James, ch. 4,---ditto ch. 5---35. Eliz. ch. 1---22. Charles II. ch. 1. By theſe 7 ſtatutes all proteſtant diſſenters, in general, are ſubject to penalties and impriſonment for nonconformity.

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Indifference, as to religion by a monarch, would have been remarked as a crime, and the intolerant puritans who craved exemption, wanted nothing but power to become, if poſſible, more tyrannical, than (as they pretended) were the principles of the church they reprobated.

In all ages religious ſectaries have been deemed dangerous to civil government, and looked upon as the ſource of faction and private combination; yet when any attempts were made by the civil magiſtrate to cure this evil, it was always enflamed by the violence of the remedies, for which reaſon (though late) aroſe the paradoxical principle of toleration, firſt introduced in the council of that bigot Queen Mary, by Cardinal Poole, and diſcuſſed between him and Biſhop Gardiner, in order to give full ſcope for abſurdities to expand in, and by growing ridiculous, to die away in contempt and ſilence.

But this principle of toleration, or legal exemption, did not obtain until after the diſcovery of the powder plot, planned and contrived by the papiſts in King James's time, when he paſſed an act againſt them *, reducing and conſolidating all the laws, which had been enacted on the ſubject it treats of, into one. The rigors collected in this act, are great and many; they appear oppreſſively intolerant, but as they were calculated to promote uniformity, in the epiſcopal church, and repreſs the furious and malicious machinations of the papiſts, their only juſtification was the ſpur of the occaſion.

* 3 James I.

It is manifeſt from the preambles to the ſtatutes againſt popiſh recuſants, that it was not their *thinking* differently from other ſubjects, but their *acting* in violation of our laws that obliged the legiſlature to preſcribe penalties againſt them; although it has been doubted whether thoſe ſtatutes againſt papiſts, or their prior actions, were the more ſanguine and perſecuting. Does it follow, however that at this late period when bigotry is conſuming away; when philoſophy flouriſhes; when the nation is undiſtracted by the machinations of prieſts and jeſuits; and is open and reſorted to by all nations, as an aſylum of liberty; and when no ſuſpicion of treaſon remains againſt papiſts who have proved themſelves good ſubjects; that they ſhould ſuffer for the indulgence of prejudices in matters of religion? certainly not! while they ſwear allegiance and ſupremacy, and act in conformity to the laws of the ſtate.

The pretended love of civil liberty, and the reſtraints of the hierarchy, diſguſted the puritans againſt church and prerogative. They encreaſed their authority in Charles I. time; and regretted the obnoxious power of his crown. They abhorred popery, and preſbyterianiſm gained now conſiderable ground, more perhaps out of a hope that the tyranny of the king would conſequently be curtailed, than reſpect to, or admiration of, the preſbyterian model. Epiſcopacy was firſt aboliſhed by the Scotch, who covenanting to reject all religious innovation, the puritans followed their example, and abſolutely aboliſhed it in England. Had Charles not invaded the privileges of the people, but governed conſtitutionally, the puritans would not have encreaſed their power; one evil produced another; that ſect among them diſtinguiſhed by the name

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of independant, would have been leſs ſevere againſt the papiſts, and they would not have aſpired to aboliſh monarchy, if Charles had not ſtriven to make it abſolute; they would have preferred it, if properly limitted, to republicaniſm. But it was unfortunately otherwiſe, under this unhappy prince, who bred up by his father, and having the examples of the Tudors before him, in favour of prerogative and regal power, quarrelled with his parliament, introduced a civil war, eſtabliſhed by his temerity the preſbyterian model, and the uſurpation of a hypocritical, but glorious tyrant. An army of enthuſiaſts drove him away from the capital, until, notwithſtanding his forced conceſſions, which the parliament voted ſufficient, theſe independents brought him to the block, and finiſhed their purpoſe of republicaniſm in his deliberate death; which, excepting the enormities and evil conſequences of prerogative, would never have happened, and the progreſs of the reformation would not have been impeded, but uniformity would have been encouraged (without any ſeperation) in the mode of public worſhip.

In the general concuſſion of events, and the confuſion of the nation at the *unexampled* trial and execution of the ſovereign, who, however bad his government, was triable by no law on earth, the whole community being aggragately lodged, and their univerſal will centred in him, and his kingly character; and he being therefore their aggragate majeſty *, it remained until the reſto-

* The author does not mean to ſay, that the execution of this monarch was unwiſe or impolitic. It was expedient becauſe the liberties and welfare of the ſtate would otherwiſe have been loſt. It was prudent as an example to future kings, though principally intended to make the ſubſequent uſurpation ſecure. The *man* was executed in the *king* for violating his truſt, and his *wilful royal* crimes. But the kingly office was preſerved, although ſuſpended by the uſurpers.

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ration of his fugitive ſon, to eſtabliſh by law, that uniformity of national religion, which has ever ſince been enjoyed, except under James II. in peace and freedom.

Charles II. reſtored prelacy, and tho' probably careleſs of any religion, ſecured the ſtate by diſabling popiſh nonconformiſts from ſitting in either houſe of parliament.

On the coming in of King William, the puritans, who after prelacy was reſtored, had greatly reduced in number, were, on their attachment to government, and their pretended ſervices, at the reſtoration and revolution, firſt exempted from the pains and penalties in the ſtatutes againſt papiſts, and nonconformiſts in general, provided they ſubſcribed the articles of the eſtabliſhed religion, and took the oaths of allegiance *. This was the firſt inſtance known in England of

* See Stat. 1 W. and M. whereby none of the acts againſt popiſh recuſants, except 25 Ch. 2. ch. 2. 30 Ch. 2. ſt. 2. ch. 1. ſhall extend to any perſon diſſenting from the church of England, who ſhall take the oaths of allegiance, ſubſcribe the declaration againſt popery, and aſſemble in a meeting certified to the biſhop, &c. of the dioceſs, leaving the doors of it open, and ſhall not deny in writing the trinity.

And in reſpect to proteſtant diſſenting teachers and preachers in holy orders, or pretended holy orders, ſee the ſtat. 17. Ch. 2. ch. 2 called the 5 mile act, which prohibits them from teaching in any meeting (unleſs paſſing on the road) or required by legal proceſs, within five miles of a city or borough, and from being ſchoolmaſters, without taking the oath therein mentioned, on pain of 40l. or impriſonment.

Alſo 22 Ch. 2. ch. 1. which prohibits them from teaching in any meeting otherwiſe than according to the church of England, on pain of 20l. for a firſt, and 40l. for every other offence.

And alſo 13 and 14 Ch. 2. ch. 4. ſt. 14. which prohibits them from adminiſtring the ſacrament, unleſs ordained prieſts; all which are repealed by the above ſtatute, 1 W. and M. on their taking the oaths therein, ſubſcribing againſt popery, and ſigning the 39 articles, except 34, 35, 36 and part of the 20.

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a toleration by law, which inſtead of its being a toleration of opinions, as it has often been miſtaken to be, is no more than an exemption from certain diſabilities and penalties annexed to nonconformity in the eſtabliſhed church, with liberty publicly to avow peculiar opinions under her ſanction; an indulgence this, which ſo far from being humiliating for any one to receive, was a real benefit, becauſe priviledges were enjoyed by it, which conformiſts did not poſſeſs *.

William III. Queen Anne, George I. and II. who ſucceſſively filled the throne, on the abdication of James II. a bigotted catholic, very properly paſſed laws reſtraining the papiſts who had given inconteſtible proofs of their enmity to the ſtate; and although Monteſquieu ſays, that they do a great deal of miſchief in cold blood, yet as the offences intended to be guarded againſt by their penalties, were not the invaſion of private property, but the dethroning the lawful prince, and overturning the government, they were paſſed of neceſſity, and as a guard againſt violence to the conſtitution. In the preſent age they have all lain dorment, and are continued in force, that it may appear to the enemies of the conſtitution, that if they are connived at, it is not for want of power, but of inclination, and a neceſſity to puniſh.

As the legiſlature have nevertheleſs lately, from a true ſpirit of wiſdom, philoſophy and genuine liberty, been diſpoſed to favor the natural freedom of conſcience, firſt by requiring the diſſenting clergy to ſubſcribe the ſcriptures as a rule of faith, inſtead of the articles, and alſo repealed the ſtatute 11 and 12 W. III. againſt papiſts, who like the proteſtants, have proved good and liege ſubjects;

* See after.

and

and as both are amenable to the laws of their country, and puniſhable for a breach of them, the legiſlature would complete the ſyſtem of toleration by making it only ſubordinate to the laws of nature, and the national eſtabliſhment, in repealing, not only the act of that name paſſed by King William under a faction, who though bred a calviniſt, never bore the diſſenters any other favor, than as agreed with the then ſcheme of politics, but every other act in the ſtatute books, paſſed ſince the reformation againſt nonconformity; toleration would then be, what it ought to be, univerſal, in reſpect to conſcience, and reſtraint only directed againſt our actions, which can never be bad, while we pay a due obedience to that ſpiritual doctrine, it is the buſineſs of the national church to adminiſter, more for the ſake of the temporal laws in general, as reſpecting this world, for which a national church is properly made dependant on the ſtate, than the ſpiritual laws, which are in themſelves independant, as reſpecting a world to come.

In regard to negative nonconformity, how many are there who incur the penalty of the law on that account? Were it to be enforced our churches muſt be encreaſed, or they would not contain their reſpective pariſhioners. The law is ſuffered to ſleep in this particular, as well towards proteſtants of the eſtabliſhed church, who neglect their legal duty, as towards thoſe idle and ridiculous ſectaries called methodiſts, who in equal, if not greater violation of the law *, have been ſuffered to build ſeparate tabernacles, for the ſake, as they pretend of a more fervent worſhip of God in Chriſt by a life of faith. Theſe

* By wilfully and contemptuouſly avoiding the national church.

ill

ill guided people (if ſincere) would be an indiſputable proof of what we have ſaid in a former chapter, that, as the kingdom of Chriſt is not of this world, their attention would be wholly eſtranged from it, to the injury of ſociety and themſelves; but as they are ignorant of the principles they profeſs, they find an advantage in hypocriſy, and are as worldly as others who are leſs devoted to folly, deluſion and deceit.

A long connivance at ſuch negative nonconformity, favored much that toleration, or legiſlative ſilence, which opens the road to truth and happineſs. Spiritual tenets, be they what they may, are of no conſequence whatever to a free government, but as they may promote a civil or political purpoſe, tending either to rebellion, or the enthroning a dangerous pretender to a forfeited or proſtituted crown *. This was the caſe when rigor and coercion were enacted; but it would be a diſgrace to continue what was intended as a remedy, and protection, after the diſeaſe and the danger were intirely removed.

When the reformation commenced in Europe, wiſdom and virtue emerged from their cells of obſcurity. By deſpiſing a pretended holineſs in the Pope, whoſe will and word had long been the criteria of truth and juſtice, they began to feel their own importance, and they opened the eyes of men, who annulled his power over them and all his votaries. A belief in his abſurdities vapored away in the minds of all but the ignorant, who had neither knowledge to direct them better, nor much to loſe. The chriſtian church retained part of her doctrines, but joined her ſpiritual authority with the temporal, until by

* That a government (ſays Mr. Voltaire) may not have a right to puniſh the errors of men, it is neceſſary that thoſe errors ſhould not be crimes, and they are crimes only when they diſturb ſociety. *Treat. on Toleration.*

degrees,

degrees, the liberty of the mind broke forth, and ſeparated men from her rites, who diſapproved of her formalities, as vain, idolatrous, and ridiculous. Although to this ſeparation is owing civil liberty, it was attended with great diſorder and bloodſhed, and the downfal of the church.

The intereſt however of mankind require a religious eſtabliſhment, ſo long as religion may be thought beneficial to their actions; and the empire of force had better prevail over public opinions, and direct them to an uniformity, allowing a full indulgence to the innocent ſcruples of private conſcience which can injure no man, than that opinions differing from one another without any eſtabliſhment ſhould be left to the conſequences of faction, animoſity and fanaticiſm, which would be dreadful and diſtracting to the ſtate, by diſturbing the public tranquillity, beſt maintained by a public uniformity, expreſſed or implied.

The *contradictory idea of toleration*, was ſuggeſted as a means of uſeful indulgence, to abate the ardor of ſeperate opinions, which reſtrained, or puniſhable, if publicly avowed, in contempt of the eſtabliſhment, might grow dangerous and important.

Toleration (meaning liberty unreſtrained in thought or deed) is the only guide to truth, and while enjoyed without flying in the face of the national eſtabliſhment (ſuppoſing it good) is undeniably the right of all men. So obſtinate in all things is falſehood, and ſo little capable are the bulk of mankind of diſtinguiſhing the truth, that to ſet up any thing againſt them, but provokes their errors, and unlike men thirſting for ſolid knowledge, inſtead of humility and contemplation, they give birth to ſpleen, which rivets

their

their abſurdities, and prompts them to revenge and war; to correct and prevent which, power has been neceſſarily exerted; the good order and harmony of the whole community would otherwiſe have been embroiled by contrary opinions, and perpetual ſtruggles, and conteſts to ſupport them.

The various diſſention of opinions, and the miſery and miſchief occaſioned thereby, have ever juſtified an eſtabliſhed doctrine; in honour whereof, and to prevent anarchy, the crime of hereſy was originally conſtituted; a crime conſiſting of a denial of its principal tenets publicly, which, being afterwards carried great lengths by the chriſtian church, was puniſhed with cruelty.

On the advance of the reformation, religion wore a more pleaſing countenance. Hereſy was moderated, and at laſt an acknowledgment was made, that particular modes of belief or unbliefnot tending to overturn chriſtianity, or ſap the foundation of morals, were no objects of coercion; the puniſhment, therefore, of hereſy was abated, and our minds, in this particular, delivered from the tyranny of bigotry and fraud.

Religious liberty thus began under *intolerance*. The favourers of the popiſh church, were ſubjected to pains and diſabilities, to promote the liberal mode of the national; and freedom of conſcience was encouraged at the expence of an unjuſt power.

Liberty, property, and religion, are all that the ſtate can ſecure to us. An eſtabliſhed church may be called the religion of the magiſtrate, as being the religion of the public, which if wholeſome and free, like the Engliſh, ſhould be maintained as a ſupport of civil liberty. It

ſhould

ſhould be protected by its own ordinances *, admitting none within its pale, who will not ſubſcribe to, and obey them; it ſhould alſo indulge and protect all ſeperatiſts, provided they enjoy their unlimited right with decency and reſpect, not contempt and opprobious contumacy.

Without an eſtabliſhment, religion would be as various, as the countenance of its votaries. Each ſectary in it would contend for power, and exert it to the intolerance of others. Such is the pride of man, that as religion is metaphyſical, and out of the reach of demonſtration, he would in the midſt of conflicting opinions adopt his own, to which he has an undoubted right, if avowed with deference, and in peace. Men may talk of the liberty of avowing opinions, and pretend that it is for the ſake of truth; but ſuch is human vanity, that they will ſeperately grow ſo wedded to their own reſpectively, that each of them will call thoſe eventually adopted the only true ones; and ſeeking power by converſion, force, or fraud, will eſtabliſh them, and reſtrain all others. What confuſion and diſorder would the want of a national eſtabliſhed church create? civil liberty and property would be liable to the innovation of ſectaries, who perhaps regarding no church whatſoever, but boaſting of the freedom of conſcience, would encreaſe oppreſſion in their conteſts for power. A national church,

* The evils which require the remedy of a teſt law, would never happen, if men would content themſelves, as in reaſon they ought, with enjoying their own opinions without intruding them upon others. In the ſame manner, would men but obſerve the rule of right in general, there would be no need to have recourſe to civil ſociety to rectify the evils of a ſtate of nature. *See Warburton's Alliance.*

therefore,

therefore, is indiſpenſible, in a public ſenſe, to prevent more eſtabliſhments than one, and the ſetting them againſt each other in a kind of ſilent war; and that national church is the beſt, that is the moſt reaſonable in her doctrines, moſt manly and liberal, which the chriſtian church undoubtedly at preſent is, in England, as eſtabliſhed by law. Though maintained by the public, it commands no opinion; all her members are free, and though they contribute to her maintenance, they may believe what they pleaſe, and be allowed to ſeperate from her, on condition of their allegiance to the ſtate, which they negatively ſerve by their inactive peace; but as in a free country, religion is publicly connected with, and inſeperably forms a part of the ſtate, whoever deſires to join in the public ſervice of it, can have no reaſon to refuſe ſubſcribing all its ordinances, and rules. To deſire ſo to do, and preſerve a nonconformity, would be contradictory, and teſtify an inclination to poſſeſs a power to introduce their own principles, in contradiction, and excluſion of all others; but which, the legiſlature ſuſpecting, has fully guarded againſt, by the corporation, * and teſt acts †.

The diſſenters, who hold no ſpiritual communion with the members of the eſtabliſhed church, but are exempted from the penalties againſt nonconformity in general, have an undoubted advantage, by having it in their choice to qualify themſelves or not, for holding of offices of truſt or profit. The corporation act, 13 Ch. II. made for the well governing, and regulating corporations, directs, that no perſon ſhall be elected into any office, or place concerning the government of ſuch corporation, who ſhould not,

* 13 Charles II. ſt. 2. ch. 1.

† 25 Charles II. ch. 26, explained by 9 Geo. II. ch. 26.

within twelve months next before, have received the ſacrament of the Lord's ſupper, according to the rites of the church of England. This is a legal diſability, and by leaving it in the choice of any man, either to qualify himſelf or not, the legiſlature both favors and puniſhes him, according to the event. If he wiſhes to take on him an office of honor, or profit, but is ſo attached to his ſcruples, that he will not take the ſacrament required, then he is puniſhed, but if he will only indulge his ſcruples, in order to be ineligible to an office of burthen and expence, then he is favored; and thus having a power to exempt himſelf from burthenſome offices, he is on a better footing than the members of the eſtabliſhed church. Yet this is the *effect*, more than the *intent* of the corporation act, which is to exclude diſſenters from *power*, and not to *puniſh* them, *poſitively for their nonconformity*; notwithſtanding the common error, fallen into by many (otherwiſe) very able men, of confounding the *end* of the corporation act, with the *conſequence* of it; and making it a *vindictive* inſtead of a *protecting* one, guarding the conſtitution againſt all, who did not profeſs the eſtabliſhed religion, as perſons *not fit to be truſted with power*, to the loſs of which, no puniſhment was ever intended to be ſuperadded. Hence the diſſenters have an advantage, which is not, as they pretend, counterbalanced by an equivalent to the members of the eſtabliſhed church, in excluſively enjoying offices of honor and profit, becauſe the former have a choice, the latter none *.

If for inſtance, common ſoldiers and ſailors, who are the mechanical inſtruments of war, were

* See the Caſe of Sir Tho. Harriſon againſt Allen Evans.

expelled

expelled the ſervice of their country, becauſe ſome are infidels, others jews, heretics, &c. armies might exiſt in imagination, and commanders would want men to lead in martial array. On the other hand, commanders having the ſole power over them, under government, would it not be dangerous and impolitic to admit ſeperatiſts into power, as the very thing they thirſt for, towards gratifying private and public purpoſes. Let them ſubſcribe to the rules and ordinances of the ſtate, and enjoy toleration or liberty of conſcience to the utmoſt extent; they will give a ſecurity for their homage and fealty, and be puniſhable for a violation of them; they will then be prevented from diſſeminating among the people, principles ſubverſive of the national church, and in employing them to overturn it. If ſeperatiſts were admited into corporations; if made commiſſioners of the peace, ſheriffs, or other public officers, civil or military, they would accumulate power, and in their diviſions and ſtruggles to make every ſect among them the prevailing one, nothing but miſery, animoſity, and tumult, would be the conſequence. One public church which is legally eſtabliſhed, is of neceſſity juſtifiable for the general good of the community, which otherwiſe would be ſuperceded by evil, and mutual violence. Let a national church, therefore, be protected publicly for a public good. Let all men enjoy the fulleſt liberty, individually, whether conformiſts or not, on giving ſecurity for their allegiance, but let none be admitted into offices of public truſt, burthen or benefit, who will not readily ſubſcribe to all the public ordinances, civil, military, and eccleſiaſtical.

The legal toleration of the proteſtant diſſenters, as by 1 W. and M. who were previouſly puniſhable only for their enmity againſt monarchy and epiſcopacy, which they had once deſtroyed, has been deemed humiliating in them to accept of, as if inſtead of being thus tolerated, they ſhould have been tolerated as a ſeperate clergy, on no condition but allegiance. Were the ſtate convinced, that ſuch a toleration would have encreaſed the ſubjects veneration for the magiſtrate, at leaſt not have leſſened it, or weaned him of a reſpect to a limited monarchy and epiſcopacy, it would have been granted; but ſuſpecting the contrary, it exacted a ſubſcription from the diſſenting clergy to all the articles of the national religion, ſome few reſpecting forms, only excepted.

Hence, inſtead of repealing the acts againſt nonconformity in general, which included the papiſts, thoſe acts remained in force, and the exemption of the proteſtant diſſenters from their penalties, was called a toleration. Had they been repealed, toleration would have been general. No man among the diſſenters would have been privileged as a pretended clergyman, but all of them would have been left at full liberty to enjoy their own mode of worſhip, and their preachers have adminiſtred whatever doctrine they pleaſed, as field preachers do at this day, without any ſpecific toleration, and unheeded by the ſtate and hierarchy. Were they expreſly tolerated, the very import of the word is, that they could not otherwiſe do this, which is contradicted by the fact. Where then is the humility in the diſſenters acceptance of the act of toleration? Is it in being freed from the penalties againſt nonconformity, which were preſcribed

ſcribed in favour of a national uniformity of prayer? Or in their being permitted to enjoy the pretended title of clergy, while they adminiſter the chriſtian doctrine publicly, and being excluded, as ſuch, from ſerving pariſh offices and juries? Is it in being required to ſubſcribe certain articles of the thirty-nine of the national religion, or being excluded from power under government? Or is it in having an alternative to refuſe offices of expence and burthen, on account of ſcruples, or to accept an office of honour and profit, by diſſolving thoſe ſcruples? To a philoſophical obſerver it is in neither; yet in reſpect to their teſt and creed the legiſlature extends their indulgence, in ſubſtituting a ſubſcription of the ſcriptures at large inſtead of the articles, which it would be equally wiſe to do by the national clergy.

When toleration was contended for in King William's time, and a repeal of the ſacramental teſt agitated, popery was the common enemy. This teſt was attempted to be removed, in order, as it was urged, to unite all proteſtants, diſſenting or not, againſt it. This was like calling in of foreigners to aſſiſt ſtates againſt their foes, until from allies, they would probably become maſters. But it was not complied with, and perſecution was pretended, becauſe it was not; although the national church extended her indulgence to all men, and ſpread herſelf (like the canopy of heaven over all ſublunary empires) to the protection firſt of herſelf, then of all her ſeperatiſts, by her unity with the political power of the national government, according to law, whereby perſecution was only a name, and none puniſhed but for evil actions, which no religion, or the peculiar forms of it, could encourage. In the

words of Swift, a lover is ever complaining of cruelty, while any thing is denied him by his miſtreſs, but when ſhe ceaſes to be cruel, from that moment ſhe is at his mercy. *So perſecution is every thing, that will not leave it in men's power to perſecute others.*

From the firſt ages of chriſtianity opinions have varied, and from the nature of man will ever continue to do ſo; a ſufficient reaſon why charity and indulgence ſhould prevail with all men, ſo long as, in general, they confine their actions within the limits of the laws. This, as Voltaire ſays, will chain men to the ſtate. The Turk, the papiſt, and diſſenters of all denominations, will find an advantage of living under its laws, which regard nothing but their actions.

Religion is an affair between God and man; law between ſtates and the people, which has nothing to do with conſcience, but as it may affect public government, public and private intereſt, and worldly happineſs. Had religion, therefore, never been made an affair between man and man, theocracy would have continued, and none have aſſumed the throne of God, to dictate to their fellows, his holy word, or conſtituted any opinion heretical.

And had civil government never been deemed a right divine, but mankind had of right been governed, under God, the governor of all, by themſelves, the force, fraud, and corruption of wicked, ignorant kings, and rulers, would never have prevailed, to their ſcandal and abhorence, and the oppeſſion of the people. They would never have uſurped the throne of the Almighty, as tyrants to controul the people's conſcience, or limit their actions as ſlaves. Free and dependant

as

as earthly beings, and not lord's anointed, the liberty of conſcience, and the freedom of action would have been intire. They would have reigned in true glory to their own honour, admiration and happineſs, in concert with the people, whoſe laws they executed, and with whom they would have lived in mutual proſperity. No eccleſiaſtical power would have loaded the people with the divine, which is but a mock word for diabolical, right of princes, or the inſtitution of government, as if theſe came down from heaven, expreſs meſſengers from the Great Father of men; nor no civil deſpotiſm would have bound us in chains, or warred with the Omipotent in robbing us of the bounteous rights, he granted us in our very nature. Neither of theſe would have been made prior to, or independant of thoſe rights, which coming from God himſelf are only divine, and are primary and ſuperior to all controul. The rights of princes, and the forms of government are ſecondary, and come from man, who creates them in truſt for himſelf and others. Civil and religious government, therefore, are derived from man, whoſe kings or governors, in whom he truſts their adminiſtration, are rather his ſervants than maſters, his fellow ſubjects than ſuperior lords, excepting that pomp, ſhew and parade, which may be neceſſary to diſtinguiſh them from the people, and which, with prerogative relate only to the kingly office, and not the man; for theſe, being the grants of man, not of God, render the idea of *a jus divinum*, either in temporal or ſpiritual affairs, abſurd, ridiculous and contemptible.

Yet ſuch is the complaiſance of the Engliſh church, that it has ever been ready to devote its ſer-

vices to the tyrannical purpoſes of the crown, over the juſt and undeniable rights of the people, becauſe its honours and promotions depend on the proſtitution of its principles, in favor of miniſterial corruption, and political deceit, whereby it courteouſly endeavors to complete the ſyſtem of civil domination, under the accurſed pretentions of a jure divino right, to govern the lives and conſciences of men by a ſpecial commiſſion from above.

Thus civil impoſition is countenanced by religious and church deluſion. The mitre preſumes to controul our faith on the pain of hell, and the crown arrogates a power, denied it by juſtice, of limiting our rights on pain of death. We are traitors and criminals in exerting the latter; for which we are puniſhed by the axe and halter; and we are damnable heretics in exerting the former, for which we are puniſhed by the holy flames of a ſacred fire.

The puniſhment of hereſy, on its early inſtitution was extreme, and more than ſavage; and though inflicted by a power only ſocial, and aſſumed without even the pretext of prudence in the legiſlature, it had no right to it whatever, under the ſuffrage of their conſtituents. It conſiſted not only in death, but in torment, by burning the *unholy* delinquent, until the latter end of King Charles II *. time, when it was ſubjected only to eccleſiaſtical cenſure; yet as the latitude of diſcretion in the courts chriſtian, is very great, and unbounded by any preciſe definition of hereſy, their power of puniſhment is vague, arbitrary, and ought to be deſtroyed, and no man triable for hereſy, unleſs, as Sir W. Blackſtone ſays, the tenets charged to be heretical were previouſly declared to be ſo by ſome poſitive law, which at

* 29 Charles II. ch. 9.

all

all events would be arbitrary and unjuſt; for hereſy being only matter of opinion, unleſs indeed where any act of violence attends it, it certainly is puniſhable by no law on earth, but the law of tyranny and injuſtice. Thoſe who preſume to puniſh it, are equally liable to err againſt truth, in the profeſſion of what they call eſtabliſhed opinions, which they thence mean to defend, as thoſe who differing from them, they call heretics.

Perfect liberty requires, that all opinions, and the avowal of them be enjoyed, without diſtinction; that none in particular ſhall be diſtinguiſhed by the ſtate, but the national ones; for, what right have ſeperatiſts to excluſive favor, while deſtitute of charity, benignity, and benevolence. Let all good and faithful ſubjects ſuffer, and bear with one another, as the ſtate indulges them in the aggregate, meaning all thoſe who diſſent from the doctrine of the eſtabliſhed church, and hold no ſpiritual communion with her members. This is real liberty, and tends more to the annihilation of hereſy, than ever did the horrid puniſhment of burning an unrighteous criminal, or ſubjecting him to eccleſiaſtical cenſure. Under the auſpices of ſuch liberty, hereſy would be loſt, and ſurvive in the ideas of none but fanatics, whoſe ardor would abate, in proportion to the freedom and uninterruption they would experience; and in being totally unmoleſted in the enjoyment of their enthuſiaſm. Philoſophy would ſpread her genial influence, and finding an aſylum in a ſociety of ſubjects, under this liberty expand their minds; prepare them for the impreſſion of uſeful truths, and make them honeſt and

and humble; benevolent and happy; wiſe and juſt.

And thus, as it is obvious, that hereſy is not a crime, it is not, nor ought not to be ſubject to human puniſhment, which can only extend to human actions. Could temporal and ſpiritual vice be prevented, or the temptation to either removed, all would be well indeed; but this can never be done, but by removing the great cauſes, or motives in the mind, of vanity and voluptuouſneſs, ignorance and depravity.

CHAP.

CHAP. VII.

Of the Idea of Honor, Ambition, and Pride, as productive of moral and criminal Offences.

THE common definition of honor, is eſteem and reſpect, which it draws as a conſequence of valor, merit, or dignity. To honor a king, a parent, or maſter, is to worſhip him for the ſuppoſed virtue he poſſeſſes, and employs to the good of a ſubject, child, or ſervant, who deſerves equal honor for his ſubjection, reverence or ſervitude. If honor be applied as a reward to enoble another, it is then merely a dignity, implying, that the perſon who bears it is illuſtrious in himſelf, and is thence diſtinguiſhed as ſuch by an artificial title. If applied to a nation, and its government, it implies, *that* ſuperior virtue in many rulers, by which the people are ſuppoſed to be governed in perfection. Thus the *Lex Regia* enacted under Auguſtus, the Roman Emperor, by which the Romas are ſuppoſed to have transferred to that prince, in his own perſon, all their empire, and all their power; or indeed the imperial law, by which moſt of the emperors received their government, only ſuppoſes that the prince is under no obligation to obey the laws, though bound by the law of nature and honor to

obey

obey them, which conſtituting him a perfect character, under God, imports that he cannot govern tyrannically and wickedly, according to his vicious inclinations, but virtuouſly and benignly for a general good; according to the ſuppoſed perfection of his character.

Honor, however, of which we frequently hear, is a term of little or no ſignification. It was unknown in the common parlance of men, before the inſtitution of civil ſociety, and civil government, which being eſtabliſhed as a guard againſt the evils of a ſtate of natural ſociety, and of courſe implied, that they were abſolutely neceſſary to regulate human actions, and promote preſent and future happineſs, their laws are the conditions, whereby ſuch happineſs is to be obtained. Honor either implies, that internal ſenſe of right, which God has given to all his creatures, and by which they might conduct themſelves, without injury, murmur, or complaint; or that human laws being the wanton effects of civil legiſlators, are unneceſſary; becauſe what they enjoin, or reſtrain, may either be done, or avoided without them, or what mankind agree upon, may be performed by the ties of honor, which are ſuperior to, and independant of them.

Hence, honor is the conſequence of the laws. When men decline ſubmitting to them, and depend on themſelves, they are moved by what they call honor, which they conſider as preferable, and more perfect. Laws, however, being made by men, as well as honor is thus conceived by them, it is a contradiction, that what they have made on the one hand, ſhould be deſtroyed on the other. Honor is certainly an enemy to the laws, or the laws are enemies to honor; and men who can conduct

conduct themſelves happily under the one, muſt conſider the other as a burthen. The obedient ſubject, who reſpects the laws, is a different character to the *honorable* ſubject, who laughs at them as uſeleſs. The former is by compariſon the feeble member of ſociety, who is good through *fear*. The latter, the perfect one, who can never offend through a ſenſe of *honor*. Yet this is fallacious. If the man of honor had remained a perfect character, before the inſtitution of human laws, and all men had been honorable, thoſe laws would have been unneceſſary. Natural virtue, if uncorrupted, might poſſibly have made them ſo; but honor, as it is an unnatural term, introduced after civil ſocieties were formed, can never be ſuppoſed ſufficient to reduce human actions to regularity and order, however it may govern the pride of thoſe, who find their advantage in it. While men act under the influence of honor, they withdraw themſelves from the laws, which, as Beccaria obſerves, are inſufficient for their protection.

As this honor appears never to have influenced men, but in a few particular inſtances, and thoſe of little or no advantage to ſociety, there is no doubt, that it is obnoxious to cenſure, when applied to influence the conduct of every individual in it. Laws are either neceſſary, or they are not. They were certainly indiſpenſible under the civil conventions of men, who on their early inſtitution, were unacquainted with the term, *honor*, as they are, and ever have been, of its meaning; except, that it is above all law, though ſecondary to, and a conſequence of it; ruling the particular actions, of particular men, in deſpite of it. Honor then, as being a complex idea, and varying in its ſignification, at different times,

and

and on different occaſions, is nothing more than opinion, oppoſed to the laws, which increaſed and diffuſed in proportion, as mankind grew tyrannical, ambitious, and proud; and as they found it inconvenient to their purpoſes, which were deſtructive of the equality thoſe laws create, and which ſet them above all legal controul, as if they enjoyed that degree of perfection, which, looſing in their ſtate of natural ſociety, they ſought under civilization.

Yet honor, thus diſcovered, and made known to us, is to all intents, a tyrant, and a monſter. It is an enemy to the happineſs of civil ſociety, and to individuals who boaſt of it. If to be juſt, and ſcrupulouſly nice, and virtuous, in all our moral dealings; if to obey with alacrity, as our intereſt and advantage, all the laws we have contributed to make, and to promote an obedience to them in others. If to become uſeful, and ornamental members of ſociety, by occupations and habits, which war not againſt its conſtitutions and deſigns, but which are alike intended, for a general and impartial good, is to act under the influence of honor, then indeed may every citizen, anſwering to this deſcription, be called truly honorable. But in any other ſenſe, it ſeems a ſoleciſm, to call him ſuch, as it conſtitutes a man of honor, leſs an honeſt, than an honorable, or diſhoneſt member of civil ſociety. Honeſty is undoubtedly honor, in theory and practice, though honor be not always honeſty, in either. For how can the man of honor, who ſeperates himſelf from the laws, and truſts to himſelf to do what he abſtractedly thinks right, or to others to do the ſame by him, be called honeſt, when he prefers his own opinion, and practice of juſtice,

to

to what is marked out as ſuch by ſociety in groſs, of which he is a component part. Such a man may be honeſt enough, not to ſay the things that are not, to keep a trifling promiſe, and to pay even to the laſt part of his property, a debt of gaming. But let the common experience of the world determine, how very few men there are, who while they ſacrifice theſe to the events of play, ever think of, or wiſh to preſerve ſufficient, from the devouring jaws of chance, or ſuperior ingenuity, to enable them to act as citizens, and morally, or legally honeſt men! The vanity, avarice, and ambition of men of *honor*, prompt them to riſk the little they poſſeſs in the hope of more, which acquired by the moſt pernicious kind of vagrancy, they play away as *gameſters*, and deſpiſe the obligations they owe as *men*. They boaſt of honor as a ſacred name, and exalt it above honeſty, even in the laſt ſtage, and diſtreſſes of their vagrant and diſconſolate lives, and this in contempt of the principle, that no man is truly honorable, but who conducts himſelf according to law, and in ſubſervience to every juſt engagement; and who renders unto all, their legal and moral due.

Honor is generally the cant, and influencing term of gameſters, but it is ſeldom applied to others, except it be in the diſcharge of thoſe obligations, as citizens and ſubjects, which are mutually their due, as regulated and eſtabliſhed by law. Were men of ſuch honor, to form communities of their own, and be expelled from thoſe, that are governed by the laws, it is probable they would ſoon find a neceſſity for other inſtitutions, than thoſe of honor, which, while they

they teach them, only to be arbitrarily juſt in the payment of their loſſes at *play*, and not of their *debts*, for which they received a ſubſtantial conſideration, would ſoon annihilate. None would be able to ſupply their common exigencies, and they would then be obliged to give up the vaunting term of honor, and ſubſtitute honeſty in its place. On the contrary, ſo long as ſuch men of honor aſſociate, and mix with men of honeſty, and ſet themſelves above the laws, ſo long will that honor, which leads them only to be punctually vicious and unjuſt, be complete diſhoneſty, and inſure to them, reprobation and puniſhment.

Honor, therefore, by being above, and independant of all human laws, is an undoubted ſource of evil. It encourages, and occaſions all manner of depredations, on the honeſt part of mankind; and has conſequently fallen under the particular notice of the legiſlature, which has enacted divers proviſions againſt the practices of men of honor, under the denomination of vagrants, vagabonds, lewd, diſorderly, and diſſolute perſons, who having no viſible eſtates, profeſſion, or calling, maintain themſelves by gaming, and circumventing, deceiving, couzening, and debauching of many of the younger ſort, both of nobility, gentry, and others, to the loſs of their precious time, and the utter ruin of their eſtates and fortunes, and withdrawing them from noble and laudable employments, and exerciſes *.

Yet every man of honor may not be deſtitute of a *will* to be legally, or morally honeſt. But

* See the reſpective Stat. againſt Gaming, particularly the Preamble to Stat. 16. Charles II.

ſo

ſo little able is he, from the habits and practices of this honor, to obſerve thoſe duties, that they diſarm him of the means, in moments he is moſt anxious to obtain them; and even obtained, ſuch is the caprice and viciouſneſs of the mode, that though the man of honor is then punctual in his civil obligations, and liberal in their circulation, his generoſity becomes profuſion, and his gratifications prodigality, which are alike injurious to ſociety; ſo that this man of honor, who is a gameſter, view him in what light you will, is an unworthy citizen. He is equally pernicious, under his ſucceſs, by the ſenſuality of his life, as he is under adverſity, by preying upon the legal and moral honeſt, for the means of his maintenance, which he obtains in contempt of induſtry and virtue. Look at a man of this honor reduced in his condition; his eſtates deſtroyed, himſelf emaciated, involved in debts, ſequeſtered from friends, and the world, dreading ſhadows that paſs him, and hiding himſelf from the face of day: conſider his paſt profuſion, his hoſpitality, and benevolence, and he then becomes hideouſly pitiable; an example of horror, and a beacon whereby thoſe who behold him, may avoid the rocks, which a like ſtorm and tempeſt of honor, that has made him what he is, will force them upon, to a like deſtruction, and their irreparable loſs. Pride and oſtentation prevailed with him, while he rolled in wealth; remorſe, deſpair, and ignominy torment him in poverty, diſtreſs, and retirement, until death, commiſerating his anguiſh, removes him from that civil ſociety, in which he lived a violator of its laws, and immerſed in ſelfiſhneſs.

This is the too common portrait of a man of honor, who has loſt his reputation and eſtates. The condition of the mere plebian, is leſs painful, though more contemptible. Raiſed by his ingenuity from the moſt ſervile occupations, and having nothing of the gentleman, but what he derives from his dreſs, his life, though led with *honor*, is a continued ſcene of debauchery, and when his ſucceſſes fail, which often happens, he is reduced to a dilemma, in which neither his ſkill, nor his *honor* can extricate him, except by an alternative, which he dreads, and is aſhamed of, in quitting his aſſumed ſtation, and returning to the calling, however mean and laborious, to which he was born and bred, but from which he is diſſuaded by the flattering allurements of fortune, to enable him to ſupport his falſe appearance a little longer, until his ſhallow fund is exhauſted; when alas! all his *honorable* hopes being blaſted, he abhors a return to virtue, like the miſerable harlot, and changes the courſe of his life, by ruſhing from one vice into another, and encreaſing his guilt and infamy, by actions which ſubject him to death, as a puniſhment.

The dangerous and deceitful vice of gaming, which is ſanctified by honor, flatters its votaries with the hopes of gaining wealth; and while it encourages avarice and diſſipation, it frequently is a diſappointment to both. Even with the beſt men of honor, it betrays them into the extremes of penury and profuſion, which render them equally injurious to civil ſociety.

Ambition, as it fires the mind, and inflames it in the purſuit of falſe *honor*, ſo it obtains but a falſe happineſs in the poſſeſſion of its objects, which die almoſt inſtantly away, and vaniſh in the

the graſp. Nothing is ever enjoyed under it; and the ſearch, but leaves the purſuer in all the fever and rage of an unfettered madman, who is moved by it for the purpoſes of vanity, effeminacy, and voluptuouſneſs; ignorant, that it but ends in that miſery and diſtreſs, which moſt he apprehends, and endeavours to avoid; and this accordingly as it excites his thirſt for a fleeting proſperity, an unſtable eminence, and an airy glory.

The ambition of a virtuous mind, is virtue, which

——————————is happineſs below.

It is an alien to the torture of diſappointment, which it never experiences; to the wretchedneſs of deſpondency, which it never feels; to the ſanguine hopes of ſucceſs, which it never courts; and to the terrors of misfortune, which it never dreads. But the ambition which is founded on ignorance and vice, is the companion of pride. It diſdains the brotherly equality, which God and nature have eſtabliſhed among men, and forcing them to ſeek priority at the expence of their fellows; to change the condition to which they are by birth and education deſigned, and to indulge their corrupt paſſions in luxury and uplifted grandeur, it hurries them on, until having run their ſpeed, in which they have momentarily, and without remiſſion ſuffered every pain, that hope and fear could beſtow, they either expire ſurrounded and envellopped by ſhame, or finiſh a ſad and melancholy life, in obſcurity and ſelf contempt, leaving to their ſurvivors the airy dream, and rich deluſion, as the reward of folly and inſanity.

HONOR, AMBITION, and PRIDE, when unſubſervient to the common inſtitutions of men, as citizens, are productive of miſery, misfortune, and iniquity. Honor is the deceiving and infectious crown of ambition, as pride is the evil genius of both; and theſe, in conjunction, tend to accompliſh the knave and ſinner, by drawing mankind away from the obſervance of thoſe rules, which being ſimple and natural, would if attended to, make them happy, and hold up honor, ambition, and pride, as the execrable images of weak and vitiated minds, which they influence, as motives, or cauſes of moral evil, in ſpite of the laws, and all human invention.

Thoſe, therefore, are only honorable, who pride themſelves in doing what is conſtituted ſuch by ſociety and conſcience; ambitious, who make virtue their guide in all their conduct; and proud, who diſdain to tread the paths which lead to vice, infamy, and death.

Honor, if unſupported by honeſty, and out of the reach of controul, is but another name for unlimited knavery. Ambition, if it tend to make men otherwiſe than good and happy, is a curſe. And pride, if it ſet them above themſelves, is prepoſterous and ruinous. Hence it follows, that in free ſtates, which ſeek proſperity and quiet, honor, ambition, and pride, as they are the ſource of civil and political evil, unleſs directed to make us faithful ſubjects, benevolent friends, and to eſtabliſh brotherly, and univerſal love, a virtuous induſtry and emulation, having in view, and for their ends, public as well as private benefit, are in themſelves evils of the higheſt magnitude, operating in the mind as corrupt motives, and influencing it to the commiſſion

of

of crimes; which nothing can deſtroy, but a return to thoſe rules of nature, which are perfect in themſelves, and which, well obſerved, would render all men happy. But while falſe honor, ambition, and pride, actuate ſtates as well as men; while ſocieties are peſtered with malecontents, and legiſlators and magiſtrates are unmindful of their duty; while alike the projects of politicians, and the deviſes of the abandoned and profligate proſtitute, are directed to one common end, in the acquiſition of undue, and unmerited poſſeſſions, we muſt expect to ſee all manner of evils ſtalk abroad, and ſpeak of remedies in vain. Corruption will reign in ſpite of the meekneſs and humility of virtue, which it oppreſſes, and tho' the road to a reform be plain and eaſy, nothing will lead to it, while the whole nation are ſwallowed up by vanity, luxury, and voluptuouſneſs. The decline and fall of an old empire, may promote a reformation under the eſtabliſhment of a new one; and ſeeing to our diſgrace and misfortune, that the proſpect of it is remote in Britain, while ſhe employs herſelf in the wantonneſs of tyrannical pride, unjuſt ambition, and pretended honor, it is fortunately clear, and promiſing of every human bleſſing and enjoyment, in North America.

CHAP. VIII.

Of Morality.

RELIGION being nothing more than a dependance upon, and a conſtant communion with the Deity, though the artifices of ſtates, and men, have reduced it into ſyſtems of faith, and particular modes of worſhip, to anſwer the ends of ambition, luſt, avarice and tyranny, it becomes the aſtoniſhment of the eighteenth century, that our anceſtors ſhould have been ſo deſtitute of wiſdom, as not to be able to purſue their happineſs and glory, without introducing in their reſpective communities, a variety of religions, as the excluſive means whereby the ends of their adoration might be obtained, in the ſimple ſervice and love of the Almighty parent, and all his works. When ſtates, and men fled in the face of heaven by making religion ſubject to human juriſdiction, which is only ſubject to the juriſdiction of conſcience, they warred, like the giants of old, with God himſelf, in preſuming to controul what he alone could make known to his creatures, by the quantity of information he prepared them for the reception of, and ſuffered them to acquire. And when, they conſequently with-held their reſpect for the great creation, they gradually beat the paths of their own miſery, with all the miſery, bloodſhed, rapacity, and vengeance, which have been known throughout the world, and which have blackened the pages of hiſtory, with deſcriptions of barbarity, and cruelty, more than ſavage. Such ſtates, and

and men, have alike endeavored, from the ages of pagans, down to the days of the moſt rigid chriſtians, to eſtabliſh their militating religions, by force and fraud, inſenſible, that nothing which requires either, can be true. From the beginning of time, they have been guilty of the moſt abominable offences, in the ſight of God, and abuſed the powers derived from him, to the moſt inglorious intents; until in the preſent period of the world, when convinced and ſatisfied of the infamy of our *pious* anceſtors, mankind have yielded to truth, and opened the way to that liberty in religion, which nothing but the moſt conſummate ignorance, more than brutal, and the fouleſt oppreſſion could ever ſtifle. The jews conſtituted idolatry a capital offence. Papal tyranny completed the downfall of Rome, and eſtabliſhed ſlavery over all its dependencies. The reformation produced diſtreſs, by the rigor of its principle, in exacting conformity, and by the malice of the papiſts, whoſe folly and ſuperſtition were detected, expoſed, and deſpiſed. And the revolution, ſecured to us the freedom of thought, and deed; the one only limited by God, and nature, the other only by man. It excluded none from civil or military power, but who ſcrupulouſly declined the civil and religious conditions of the ſtate, and its church. All were left to the enjoyment of every opinion, which conſcience could dictate, in regard to God, however contrary to the opinion of the eſtabliſhed church; and to the enjoyment of their perſons, and property, real as well as perſonal; in which particular, no exception was made, but of the papiſts, who were rendered incapable of holding lands by deſcent, deviſe, or purchaſe, after a certain age, unleſs they renounced the tenets of the

church of Rome. This was an exception, which would have been, in every ſenſe, unjuſt, had it not been produced by the prior injuſtice, of thoſe on whoſe account it was made. The papiſts, on their loſs of all power in England, were, as may be imagined, vindictive, and watchful of all opportunities to oppoſe her intereſts, and to reſtore their vain and fantaſtic worſhip, and tyranny; to prevent which ſhe revolted, and the man who aſſumed the throne, vacant by the abdication of a popiſh king, of neceſſity excluded the papiſts from holding any land, in his proteſtant kingdom, and from the public enjoyment of their religion, except in the chaples of popiſh ambaſſadors. Under this excluſion they lived (though natives) until, ſufficient proofs being given of their loyalty and allegiance, they were relieved from it, by the legiſlature, under George III.* ſo that, excepting the chriſtian eſtabliſhment, as a national church, the liberty of conſcience, in points of religion, is, as it ought ever to have been, without limitation.

To the honor of the nation it muſt be allowed, that men in general have at this time, acquired juſter notions of religious liberty, and that toleration, which is in effect univerſal, ſtands on a broader baſis, than ever was heretofore experienced,

* 18 Geo. III. ch. lix. By this act, ſo much of the ſtat. 11 and 12 Will. III. as ſubjects Popiſh prieſts, &c. to perpetual impriſonment, for profeſſing the Popiſh religion and keeping ſchool; and alſo ſo much of the ſame ſtatute as diſables perſons educated in or profeſſing that religion from taking lands by deſcent, &c. or from purchaſing lands, are repealed, on condition of their ſwearing allegiance, and denying the *temporal* and *civil* juriſdiction of the pope or any other foreign prince, prelate, or potentate, within this realm. The *ſpiritual* and *eccleſiaſtical* power of the pope therefore is properly diſregarded as contemptible.

enced, even to a degree of perfection; no intolerance being known among them, but in the excluſion of nonconformiſts to the principles of the civil and religious eſtabliſhment, from power, whoſe ſcruples, it is ſurprizing, ſhould ever ſo far affect private conſcience, as to prevent their compliance with the conditions of the ſtate, when anxious for civil, or military truſts, and authority; becauſe, mild and liberal as they are, under chriſtianity, which recommends natural forbearance, forgiveneſs, meekneſs, gentleneſs, humility and love, it diſdains perſecution, and is rather a ſupport, than a bar, to that toleration, which is now enjoyed by Engliſhmen; among whom, it will ever be regretted, as a diſgrace to humanity, that there have been, ſo lately as in the nineteenth year of the preſent reign, certain zealous aſſociations of pretended proteſtants, who have teſtified, in wrath and vengence, an inclination to undermine the ſuperſtructure of religious toleration, and diſſeminate thoſe ſeeds of intolerance, which form the moſt odious part of the religion they oppoſe. Theſe ignorant and ſervile enthuſiaſts defeated their purpoſes, according to their deſerts, by the inconſiſtencies of their proceedings. Their rancorous moanings excited pity and contempt; and though their murmurs and wailings, drew together myriads of fanatical vagrants, who in their pious fervors committed the moſt undaunted outrages *, all their

* A ſociety of men having been formed in the neighbourhood of Whitechapel, for the pretended purpoſe of reforming the abuſes of the Lord's day, by kicking down the little property of peaceable fruitwomen, and the retailers of flowers, and gingerbread, theſe pious reformers, who after committing of their religious depredations, in the cauſe of God, applied to Lord G. Gordon to head their aſſociation, under the name of proteſtants. His Lordſhip, with affection and complaiſance,

their lamentations evaporated in deſpair and diſappointment, and they were conſidered by the legiſlature, to their wiſdom be it ſpoken, as idle and diſorderly perſecutors, complaining of they knew not what; and deſtitute of all religion, preſuming to ſpeak of toleration as criminal, which they endeavoured to remove by fomenting tumult and riot, and procuring, if poſſible, a degree of intolerance, in regard to papiſts, to the ſcandal of our country.

In contempt, however, of the moſt contemptible efforts to the contrary, religion and toleration are now free *, and nothing remains as an intolerance, but a power in the magiſtrate to puniſh an open deriſion of the eccleſiaſtical eſtabliſhment.

Hence we may conclude, that as morality is the ſole cement by which ſtates and men are kept together, and proſper, religion is only reſpected by either, as it may inſpire them with a love of God their father, and his general creation; and as it obliges them to do their duty as citizens, parents, friends, children, maſters, and

complaiſance, became their preſident, and after calling together, by public advertiſement, many well-meaning groaners, in different parts of the town, aſſiſted by a methodiſtical Attorney, petitioned, in their names, the legiſlature, to repeal the law in favor of papiſts, which had paſſed in compliance with the tolerating principles of chriſtianity. On preſenting this petition, his advertiſement for aſſociating all his good proteſtants in St. George's-fields, brought together a moſt numerous body of men, who, whether zealous aſſociators, or otherwiſe, diſperſed, and ſet London in flames, for which their holy preſident was committed to the Tower, and tried as a traitor, but was acquitted.

* Let every man be fully purſuaded in his own mind. Romans, ch. 14. v. 5.

ſervants;

ſervants; and to be all ſubject one mutually to another *.

Morality then is the fountain of earthly bliſs. Piety, fidelity, juſtice, and every other virtue ſpring from it, to the maintenance, and well-being of civil ſociety. Self-love, and the love of others for the ſake of ſelf, becomes in morality a benefit to all men, who while they ſeperately, and individually purſue their own happineſs, are thence made ſenſible, that they purſue it in vain, at the expence of the happineſs of others.

Morality is the proper ſcience of man, and man his proper ſtudy,

The proper ſtudy of mankind is man,

and he only is virtuous and happy, who is truly moral, whoſe manners and conduct of life, are ſo directed, that alike the brute, and the fellow creature are acquainted with his tenderneſs and humanity, which abhorring every action, whereby either may be affected, will never ſuffer him to alarm their peace, or infringe their tranquility. The moraliſt, who ſtrictly doing by another, nothing but what, in the ſame circumſtances, he would have done by himſelf; who faithfully obeys his own laws, and conſcientiouſly renders unto all due benevolence †, is not only religious, in regard to man, with whom he lives an equal, but he is the ſame in regard to God, under whoſe communion he neceſſarily is ſo. Religion between man and man, is religion with God, and

* Yea all of you be ſubject one to another. St. Peter, ch. 1. v. 5.

† St. Paul.

at the commencement of his creation, the only religion known in ſtates of natural ſociety. What piety can be more ſincere, what religion more pure, than that which teaches man to be happy, by promoting the happineſs of man, and every ſubordinate being, which is equally the production of the ſole creator? To love God, and hate either man or brute, is impious. The moraliſt, who is ſincere, and feels a charm in conducting himſelf to his own, and others advantage, independant of every fear, except of the Almighty's diſpleaſure, is righteous. No intereſt bias his inclination to hypocriſy, and living with men, as he would have them live with him, he knows no other intereſt, than content and heaven; which he contemns the inſtant he becomes immoral. The diſintereſtedneſs, which philoſophers have vainly ſought in morals, like the quadrature of a circle in geometry, is the diſintereſt of men in the abſtract, as eremites, which in ſociety is impoſſible to be found. Every man has there an intereſt, which actuates him as a citizen, a ſubject, a neighbour, a parent, and friend, without which he would be inanimate, wretched, and uſeleſs; but this intereſt conſiſts in the promotion of his proſperity, united with his fellow creatures, in ſubjection to his own laws, which limit and proportion it; and not in partial, and unequal poſſeſſions, pleaſures, and enjoyments. Pure diſintereſtedneſs, therefore, in morals, as it would be injurious, is but a name. When every man is within the reach of conſtituted right *,

* The toils of law——————
How glorious were the day, that ſaw theſe broke,
And every man within the reach of right. THOMPSON.

and

and demeans himſelf according to the rules of it, he is intereſted in it, and his actions, which it regulates, is then moved by the hope and expectation of utility, according to his deſerts, which while he aims at obtaining, by means, neither condemned in conſcience, as being exerted by himſelf, or towards him by others; nor cenſured by his own laws, he muſt be allowed to be every way religious. For who can be more religious than he, who is ſo far a companion to his maker, in ſpirit and action, as neither to imagine, or do a deed, which his conſcience abhors, or a moraliſt reprobates?

If it be aſked, why people having the appearance of great zeal in religion, have yet wanted the common affections of humanity, and ſhewn themſelves extremely degenerate and corrupt? Or why others who have paid little or no regard to religion, have yet been obſerved to practice the rules of morality? It may be anſwered, that either there is no virtue in religion, or that morality is all virtue and religion, both in reſpect to God and man. It is a ſtrange paradox, that an inhuman being, deſtitute of every affection for the affections of others, ſhould be deemed religious and godly; and that the moraliſt, who lives a life of worldly admiration, practiſing every good, ſhould be deemed impious, and unholy. It ſeems to be making one righteous for loving God, and hating all his creatures, and the other infamous, for adoring him, in the love of his creation, and his ſuperior creature man. The one thus is a religious knave; the other an honeſt man;

——————The nobleſt work of God;

who

who makes nature the object of his religion, and reſts his happineſs here and hereafter, on his humanity, his honeſty, and morality.

The moraliſt, therefore, diſtinguiſhed from the mock religioniſt, is his own prieſt, his homeſtall is his cathedral, his conſcience a ſacred veſtry, and nature his God, while the mere *holy* man, is an incomprehenſible monſter, and unfitted for, what he is deſigned, the ſociety of men. The pure moraliſt is the pure religioniſt. The Deity is his conſtant companion, in all his ways and walks, and to him he reſigns himſelf with reverence and obedience. It would be impiety to ſuppoſe, that he could employ the powers he derives from the Deity, to the deſtruction, injury, or diſtreſs of his fellow creature. The pure moraliſt cannot abuſe the authority, which the Deity has given him; becauſe it would render him obnoxious in his ſight, by injuring his creatures.

If we recur to the primitive condition of the human being, in a ſtate of natural ſociety, we ſhall there find, that as naure made us men, of the ſame rank, equally free, and independant, ſhe armed us with ſtrength neceſſary for our defence, and the means whereby we may purſue our happineſs, in ſubſervience to the peculiar inſtinct of ſelf-love; to ſeek what is uſeful, and ſhun what is noxious to us. Nature having thus given us a right to purſue our advantage, without accompanying any power with the bounteous gift, whereby we may do miſchief, ſhe raiſed us above the animal creation, by giving us intellects, as well as body, which animals have, as well as ourſelves. She endowed us with reaſon, whereby we know our own good, and the good of others,

to

to diſtinguiſh real utility, from what is falſe, apparent, and tranſitory. With theſe faculties, ſhe taught us to aſſociate with our ſpecies through love, to avoid the drearineſs of ſolitude, and from our mutual intercourſes, to derive greater advantages, by the improvement of our talents, and the ſecurity of our perſons, and property, than would be met with in a lonely ſolitary ſtate. She taught us further to conform to her laws, by the guidance of reaſon, which rendered them divine; and to conduct ourſelves to the formation, and exiſtence of ſociety, which being uſeful to us, ſhe enjoined us to employ all the means of happineſs in our power, to enjoy our liberty, ourſelves, and effects, according to the law of nature; to reſiſt every unjuſt violence, that might threaten us with miſchief; and to puniſh every injury we received, without revenge for our own, and the public ſafety. She made it abſurd, and irreconcileable with her perfection, that we ſhould wilfully, and unprovokedly do harm to another, who is of the ſame origin with ourſelves; endowed with the ſame faculties, and equally ſenſible of good and ill. She ordained, that we ſhould unite by ſocial ties, and render unto each, all the ſervice in our power; and never to annoy the peace of another, which would degrade her excellence, by likening us unto animals of prey.

Thus Nature forming her creature man for morality, and ſociety, in ſubjection to her ſuperior laws, finiſhed her nobleſt work; and man being himſelf a moraliſt, is a pure religioniſt, as well with regard to his maker, and a world to come, as to man, and the preſent. But his neglect of that attention to her, which would have enabled

enabled him to have followed the bent of his own mind, without being obliged to regulate his conduct by the will of others, taught him, in the progreſs of his corrupt degeneracy, that in a ſtate, where a man was governed by his own humor; where ambition, pride, and avarice, broke forth to poiſon his inclinations, and where reaſon was interrupted in aſcertaining, as Nature intended, the juſt medium of utility, and equality, he was expoſed to trouble, and unquiet. When reaſon loſt her power, and her office, and the perfect rules of nature were diſregarded, error and ignorance, anger and reſentment, avarice and rapacity, wiſdom and truth, virtue and vice, prevailed, and compelled mankind to invent ſecurities againſt fraud and force, anarchy and wickedneſs; and to eſtabliſh conventions conformable to the laws of nature, to regulate their actions, and repreſs the pernicious, and dangerous effects of their corruption. In theſe conventions, they formed a political body, called the ſtate, and transferred their aggragate ſtrength to the ſovereign executive power, for the mutual benefit of all, to be exerciſed in the enforcing of their own laws, and for the preſervation of public and private ſafety, and good order.

In this way may we conclude, that civil ſociety was formed, and founded, in which the laws of nature, and morality are not loſt, but preſerved and reformed, and in which they were eſtabliſhed, not for the injury of individuals, but their protection and profit; not to counteract the ends, for which they were deſigned, but to improve, and bring men as near to the perfection of their being, as poſſible, which nothing will effect, but a knowledge, and practice of pure morality.

morality. It is this alone, that ſoftens the paſſions, harmonizes the affections, moderates the judgment, calms the tempeſt of worldly purſuits, lulls, and compoſes the underſtanding, and ſtamps on the heart, an immutable ſenſe of natural, and ſocial juſtice, ſo as to kirb its ferocity, and direct its intentions, for public and private good, which in a country like England, it is every way calculated to produce. Morality, and liberty of conſcience there anſwer all the ends of providence, and make man known, for what he naturally is, the lord of the univerſe, in deſpite of the arrogance of prieſthood, and the ſpecious, but wicked pretexts of the glory of God, which have been productive of all the evils hitherto known, and lamented, by philoſophers, ſocieties, and the world.

Delivered, as we properly are, from the tyranny, and ſlavery of falſe religions, which, though they had the Almighty in view, were little more than a mockery of his tranſcendant excellence, and a proſtitution of the bountiful faculties of our nature; delivered alſo, as we are, from the foreign controul of conſcience, and the oppreſſion of ſovereigns, what does there remain, under God, and the natural liberty we now enjoy, at the expence of our anceſtor's fortunes and lives, to complete our happineſs? Is it not morality? —whoſe pleaſures are of the heart, while thoſe of ſenſe, by being as ignoble as the pleaſures of brutes, and yielding no ſatisfaction in reflection, are unworthy of a man? The pleaſures of morality, are great and many; they are laſting as life itſelf, while ſenſuality is ſhort, and dies with appetite. The pure moraliſt, in admiring the works of nature, art, and truth, derives enjoy-

ments far ſuperior, to what is poſſible to be known by the animal, who cloys over his feaſt, which is followed by ſatiety and diſguſt. No painful feelings ſucceed the enjoyments of the moraliſt. He exerciſes the ſocial, and benevolent affections, the duties of humanity, charity, and love; he helps the weak, relieves the diſtreſt, and as an active being having always ſome end in view, to increaſe his happineſs, he purſues it laudably, and in compliance with his intellectual pleaſures, either in improving his mind, doing good to others, and meriting the bleſſings of heaven; or meeting the approbation of wiſe and virtuous men. While his intellectual abilities make him reſpectable, his honor and honeſty, make him praiſe worthy. The teſtimony of conſcience * makes him happy in himſelf, and his morality contributes to the happineſs of others.

This is the religious virtue of piety and morality, which tends to our ſalvation, here and hereafter.

O! thou uncreate! What would be the proſperity and glory of man, were he truly and religiouſly moral! Would the whole nation hurry on to private and public ruin, by their vice and inconſiderateneſs? Would the widow and the fatherleſs weep and ſigh for comforts loſt? The merchant and trader meet their ruin? The virtuous be oppreſſed, while the vicious triumph? Would the human heart ſecretly pine, in excruciating pain, over the reflections of infamy? Would the harlot groan in diſeaſe, wretchedneſs and death? Would the virgin heave her fond and tender boſom, at perfidy? The affectionate wife lament

* For our rejoicing is this, the teſtimony of our conſcience, 2 Cor. ch. i. v. 12.

the

the harſh, and brutal behaviour of her conſort? Would the huſband, maſter, or friend complain of the ways of wives, ſervants or acquaintances? Kings of ſubjects, or ſubjects of kings? Would the innocent be injured, or the criminal ſuffer? Would natural or civil liberty be abuſed by actions, which ſubject us to impriſonment, and puniſhment? Would the modern philoſopher, or free thinker, who is barely freed from groſs impoſitions, live a profligate, in a ſtate of intellectual embarraſſment? Would he impertinently aſſume the name of philoſopher and freethinker, out of mere diſregard to national prejudices? Would he, in the debaſing habit of diſbelieving, treat all virtue with profaneneſs, and unhallowedly make the gibbet the ſtandard of honeſty? Would pride, luſt, intemperance, or avarice prevail? Would mankind find an intereſt in injuſtice? Would they only be honeſt through a fear of human puniſhment, or dutiful becauſe it is not their intereſt to be diſobedient? Would they be unworthy of truſt and confidence, or ſuffer any worldly advantage to overcome the danger of offending God and conſcience? Would they forget their creator, and live in ſin? Would Nature ſicken over her creation, or the earth ſhudder, at the foul and dark practices of the human being?—if MORALITY were ſtudied, and univerſally known and practiſed?—Would to God, that religion, as vulgarly underſtood, and its name, were rather obliterated from the language of men, than that any among them ſhould be deemed religious, in the midſt of their iniquity; morality would then be underſtood; it would mature with our happineſs, and having for its end, public and private advantage, regulated by human

human laws, it would proſper, and every moraliſt be truly religious. Philoſophers would heighten their piety, in the laſt attainment of a knowledge of the Deity. Philoſophy would be well diſtinguiſhed, and proving unqueſtionably, that virtue and morality conſiſt in a power, and diſpoſition to anſwer all the ends of nature, every thing good and happy would be obtained by it. No pretended philoſophers, or philoſophical impoſtors would exiſt, to ſully the name of wiſdom or virtue, by their ignorance and vice. Under true and conſcious morality, vice will diminiſh, virtue flouriſh; mankind will be better; criminal laws be leſs neceſſary; and puniſhment, in time, be utterly unknown. The conſcience of every moraliſt will direct him to love God, and confiding in him, he will ſubdue and deſpiſe all the allurements of the world.

Happy, therefore, would it be, if under all the bleſſings of liberty, thoſe who enjoy them, would improve the bountiful, and endearing ſcience of morality, by which they would be ſecured from every internal, and foreign danger, and living happy in this world, have no reaſon to apprehend the contrary in another; or fear or ſuffer the puniſhments of either.

CHAP.

CHAP. IX.

General Concluſion.

ON the whole, and as it may be impoſſible to ſhew, that crimes of human inſtitution will decreaſe, under the ſeverity of puniſhment, but that they will ever be committed, were it even ſeverer than is allowed by the laws of England, it is the undoubted duty of wiſe legiſlators, that what cannot be entirely remedied by the utmoſt ſtretch of violence, ſhould be diſpenſed with, as the conſequence of vitiated liberty, and puniſhed with moderation, certainty and profit. The temptation to commit ſuch crimes, and the facility with which they may be committed, are alone a ſufficient conſideration, to induce the legiſlature to lighten the weight of puniſhment, in proportion, as the neceſſity to puniſh them may ariſe, and encreaſe. If the puniſhment of death really ſtrike a terror in us, to prevent the frequency of crimes, for which it is impoſed, it ſhould take place only, as the laſt precaution; but never in caſes, where the criminality of one man, ſucceeds the ingenuity of another, in the conſtitution of crimes; and until the precaution of preventing them, by education, employment, and good example have proved ineffectual, which

is hardly poſſible. The legiſlature may ſubject inceſt, and adultery, to the puniſhment of death, as once happened under the government of the puritans, but from the impoſſibility to prevent, and the particular motives to commit them, the magiſtrate would diſplay a national diſgrace, in the frequent execution of the inceſtuous, and adulterous. Such refinements in legiſlation are odious, and thoſe who may offend againſt them, deſerve (if any) the mildeſt of puniſhments; for, as man is a ſelf-moving machine, in matter and ſpirit, accordingly as outward objects paſs before him, or are ſeen and recollected in his mind; as he is either governed by taſte, or vice, according to the habits he has been accuſtomed to, and haſtily or falſely, either ſins againſt God or man, it is ſurely much better, that ſtates regard him for his own, and the public good, rather than leave him wholly to himſelf, for the ſake of liberty, and their own convenience; or to rely on the dread of death, as a puniſhment to prevent crimes of their own creation.

Let all offences, *mala in ſe*, criminal in themſelves, and unnatural, as marked out by God himſelf, be immediately puniſhed, by removing, without torture or malice, the criminal from among men, according to law; but let no human offence be puniſhed beyond impriſonment, labour, confiſcation, and baniſhment. If the uncorrupted heart of man, which abhors murder, and other unnatural offences, may be deterred from committing them by death, it is not equally offenſive to raviſh, forge, or thieve; nor can death operate equally, as a prevention in caſes, where the heart is not ſo ready to deteſt, and abhor them.

Puniſhment,

Puniſhment, to be effectual, muſt be as unneceſſary as poſſible. To render it ſo, mankind muſt be firſt taught the principles of virtue, and to deſpiſe idleneſs and immorality, by a knowledge of nature, and the precepts of chriſtianity. They ſhould be encouraged in induſtry, as their intereſt, which nothing but ſimple laws, and good example, with the moral force of the chriſtian religion, will properly effect, under the enjoyment of that civil liberty, which leaves them to do what is right, and proper for them to will, but which does not conſtrain them to do the contrary.

But if in civil ſociety, where liberty flouriſhes, the legiſlature and magiſtrate reſolve that death for human offences, is more favourable to the enjoyment of fredom, than an inferior puniſhment, or a ſeverer attention to the morals and induſtry of the people, which would be troubleſome, and expenſive, and interfere *wrongfully* between their liberty, and their actions; if they reſolve, that the ſacrifice of their lives is preferable, and more convenient, and that becauſe their actions are limited by the laws, they ſhould *rightfully* be left to their own prudence and diſcretion, to avoid crimes; puniſhments will for ever prevail over prevention; real religion and liberty will be abuſed, and the ſtate continue to ſee its ſubjects executed for its own default.

Let there be leſs of liberty, or teach mankind the enjoyment of it in its fulleſt extent, otherwiſe we ſhall ever and anon be convinced, that crimes of human make will at all events be committed, and puniſhments be inflicted in ſpite of its ſevereſt terrors.

Let the legiſlature and magiſtrate be more watchful of public virtue, and ſtudy to promote

it, by preventing the abuſe of man's natural, and civil liberty; but let them be leſs diligent in holding out of criminal cenſure, and encouraging of ſuch liberty, to the ends of private vice, and their own emolument. Natural and civil liberty, will then be truly enjoyed, and the ſubject be beſt prepared to obey thoſe laws, which he himſelf has made, for his own and other's good; otherwiſe, and while under the extravagant and wildeſt notions of liberty, reſpecting human thought, and the avowal of all its objects, whether in favor of conſtituted vice or virtue, man will be thence compelled in ſpite of himſelf, to commit actions, which, though limited, were not in his power to eſcape. So ſenſible are mankind of the neceſſity to reſtrain their actions, which it is the office of civil ſociety, and its laws to do, that they readily conform to it, and reſolve not to commit any act, that they have blackened with the name of criminal. What ſort of liberty then would that be, which leaves them to the perverſion of this reſolution? It is licentiouſneſs only, and productive of the vice, the laws are made to prevent. Hence, and until the ſimplicity of human nature be reſtored, mankind are more moral and virtuous, and better governed, let no puniſhment be awarded, but what is public, certain, and proportioned to the crime, and let none be executed for offences not *mala in ſe*, criminal in themſelves, that are ſanguinary.

Civil liberty, and the liberty of conſcience, conſiſt not in doing miſchief, but in directing our attention, and employing our faculties towards our happineſs and advantage, which nothing will produce, but ſentiment, taſte, educa-

tion,

tion, morality and induſtry. It is theſe that teach us the right uſe of our liberty, as citizens and men, and of the right uſe of our conſcience, in mending our hearts, by its excluſive conviction. We enjoy the freedom of our perſons, by doing what we ourſelves have preſcribed, as juſt and proper, and the freedom of our minds in thinking, and avowing of what we pleaſe. Our laws conſtitute our civil liberty, and our conſcience our religion. We are free to do what is right, as ſocial beings, and to embrace, or renounce opinions of faith, as we think they contribute moſt to our welfare, and are neareſt the truth. Civil and religious intolerance are equally unknown to us. As moraliſts and men we are left to the governance of our own happineſs. As ſpiritualiſts, we are left to ſuccour and bear with each other, unknowing, beyond the limits of conſcious morality, who is excluſively right. We are alike tolerated, by ourſelves, to do every good, of every kind, and to worſhip God, in the way that is excluſively moſt agreeable to us. As a people and a ſtate, we contribute to public worſhip, and tolerate it. It would be ridiculous for us to poſſeſs univerſal toleration among ourſelves individually, and to be intolerant by the public. The one have the ſame right to it, as the other, unleſs the public be a nonentity, and as ſuch can have no mode of worſhip, but the people any. A whole ſociety have the ſame right, in its delegated capacity to a church, annexed to its political character as a ſtate, as private individuals to the ſole, and uncontrouled enjoyment of their conſciences. The hatred and enmity of either, would be wicked, immoral, and unjuſt, ſince nature ſays to all, " I have brought you into the

" world,

" world, weak and ignorant; to vegetate a few " minutes on earth, and to mature it with your " bodies. As you are weak, ſuffer and bear " with each other. If you were all of the ſame " opinion, which you will certainly never be, " and there were only one, who differed from " you, it would be your duty to forgive him, " for I make him think as he does. He who " liſtens unto me, will judge always rightly, " while he who endeavours to reconcile contra- " dictory opinions, always wanders into errors.*"

As long as we enjoy peace and ſafety, under the protection of civil government, we obtain the end of uniting in ſociety; and enjoying the freedom of conſcience, it is of right entitled to every means we can grant it, to provide for, and ſupport the public utility.

In the proſecution, therefore, of this eſſay, it has been the author's intention, in the firſt book of it, to diſtinguiſh real liberty, from artificial, and to prove, that the abuſe of it, in individuals, and the connivance of the ſtate and magiſtracy, is the cauſe of moral evil, for which they are puniſhable by their own hands; and to diſtinguiſh in the ſecond, true toleration of conſcience, from falſe, by proving alſo, that it can only be univerſal, where it is univerſally enjoyed, as well by individuals and ſubjects, as ſtates and the public, which at this time, it actually is in England, as a chriſtian country.

For theſe important purpoſes, the author of it has enlarged on the nature of liberty, in his preface; the corruption of it, and the neglect of the magiſtrate, in his introduction; and after examining into the nature, education, and government of man, he has conſidered of crimes

* Voltaire on Toleration.

and

and puniſhments, in general; of criminal actions, in particular; of impriſonment, labour, confiſcation, and baniſhment; of the cauſe of vice, and the effect of capital puniſhment; of the means of prevention; and of the criminal laws of England; and to the ſame end, he has further, in the ſecond book, taken a general and reſpectful view of religion, and diſcuſſed the ſubjects of ſcepticiſm and faith; of hereſy and toleration; of the progreſs of religion, ſince the reformation, and of religious intolerance; of the ideas of honor, ambition, and pride; and above all, of morality.

Under this arrangement, he has humbly employed himſelf, in ſearching out the cauſe of conſtituted vice, and of the means of promoting virtue. If he has mentioned the name of God, it has been, as the author of all that is good and gracious. If he has deſcribed the effects of the various modes of faith, and worſhip of him, and meriting his kingdom, from the days of paganiſm, to thoſe of modern chriſtians, it has been to expoſe the errors, and deſigns of wicked, ignorant, and artful men. If he has treated of honor, ambition, and pride, on a republican principle, it is becauſe he is an enemy to power, falſehood, and inequality; and laſtly, if he has made pure and conſcious morality, pure religion, in reſpect to this, and a world to come, it is becauſe he conceives, that none other is more convincing, or pleaſing in the ſight of God, nor of courſe, ſo conducive to the happineſs of man, and the ſatisfaction of his conſcience *.

And thus has he formed his eſſay, in the beſt manner that occurred to him, the ſubject whereof, challenges the utmoſt ability and ingenuity of man,

* See pages 242, 243, and 244.

as

as a philoſopher, a citizen, a legiſlator, a lawyer, and a magiſtrate to explore, underſtand, and explain; and therefore a ſubject, which the author now takes his leave of, in the hope, that a man in whom theſe characters are joined may be found, who having nothing but truth in view, will liberally improve his purpoſe, and thence lead to a reform in the mode of criminal puniſhment, allowed on all ſides to be highly neceſſary.

To conclude, and as we have gone through the enquiry intended on our ſetting out, which was, whether the puniſhment of death, for offences of human inſtitution, is authoriſed by nature, policy, or reaſon; and to ſearch out the defects, under which mankind are rendered criminal, and puniſhable with the loſs of life; the author now puts an end to the taſk he had aſſigned himſelf; and if the reader ſhould complain (which perhaps he will) that enough has not been advanced to convince him, that the criminal puniſhment of the Engliſh laws is too ſevere, too indiſcriminate, too fickle, too diſgracing, and too uſeleſs, all that the author has in this place to add, is, that however uninſtructed, or unentertained he may leave his reader, after a careful and ſtudious peruſal of his eſſay; however little he may have ſaid worthy the attention of the legiſlature, or magiſtracy, of whom he has freely, but ſincerily ſpoken, he has endeavoured to bring them to examine the Engliſh criminal code, by ſubmiſſively, and affectionately ſhewing, that the welfare of a country depends on the juſtice of its laws, which is only in its fulleſt maturity, when every puniſhment is proportioned to its crime, and every crime defeated by the wholſomeneſs of the laws, and the wiſdom and virtue of legiſlators,

and

and magiſtrates; that the preſent injudicious frequency of the moſt condign ſufferings; the indiſcriminate execution of our fellow creatures, whether guilty of crimes, eſtabliſhed as ſuch by the Almighty, in his own republic, or victims to the rage of hunger, the horrors of poverty, the *ſlavery* of the moſt extravagant *liberty* *, or the pangs of deſpair, is pernicious and barbarous; that while the dark aſſaſſin, and the thief, the rich delinquent, who has offended through avarice, and the pauper through famine; while alike the malignant, and black hearted villain, and

* That extravagant and vagrant liberty may be called real ſlavery, appears from the injurious conduct of mankind, in the reign of Alfred, when after his wars with the Danes, his ſubjects were much debauched, by the example of thoſe barbarians, and gave themſelves up to all manner of licentiouſneſs and rapine, which were encouraged by the vagrancy of the offenders, under their natural liberty. Alfred, however, to prevent the ill effects of ſuch vagrancy, divided his kingdom into counties, hundreds, and decennaries, the heads whereof, were mutual pledges for the good abearing of all their families. Under the inſtitution of this wiſe and cautious prince, all his ſubjects were regiſtered in theſe decennaries, except thoſe of rank and privilege, whoſe ſentiment and education were ſuppoſed to protect them from offending. Now, though by theſe means a man's natural liberty was reſtrained, and more ſo under the laws of Canute, which obliged him not to depart his dwelling, without conſent of his fellow pledges, or the county, without conſent of the ſheriff, it was obvious, that it was thus reſtrained to his own, and the general good, inſomuch, that Lord Coke remarks, in his Second Inſtitute, "that no injuries, homicides, robberies, theft, riot, tumults, or offences, were committed, ſo that a man, with a white wand, might ſafely have ridden before the conqueſt with much money about him, without any weapon throughout England." A ſufficient proof of the wholeſomeneſs of the inſtitution of decennaries and frankpledge, under which civil liberty was preſerved intire, and natural liberty regulated for univerſal ſecurity. *See ch.* 12. *p.* 149.

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the unfortunate tranſgreſſor, travel together in the cart of infamy, to the threſhold of death, and alike the criminal for committing the moſt atrocious of crimes, and the deplorable object of a ſingle offence, which a decoy from his wonted paths of virtue and integrity, in moments of deſparation led him into, ſuffer on one common tree, the criminal juriſprudence, that warrants this, is infamous and diſhonorable; defeating as well the ends of its inſtitution, as the advantage which might otherwiſe be derived from puniſhments more equal, and leſs ſevere. The diſtinguiſhing barrier, between guilt and misfortune, points to this advantage; puniſh the guilty with humanity and profit; but relieve the unfortunate, by lightening their penalty; compaſſion will then operate virtuouſly, not weakly; the machievelian maxim, that examples of juſtice are more merciful, than the unbounded exertion of pity, will be ſtill preſerved; the tenderneſs of human nature will not prevail over the rigor of the law, where it is enforced with certainty, and according to the degree of criminality, as it will when enforced with ſeverity, and inequality; clemency too, which is commonly extended by the ſovereign, in monarchies, would there be unneceſſary, as in republics, whoſe grand principle of government, is virtue. The certainty of puniſhment, where life is not concerned, will be more uſeful, as a terror, and compenſation to the public, on whoſe account it is executed, than that of death, which though it ſacrifices one man, for the ſuppoſed preſervation of thouſands, is leſs efficacious than labour, impriſonment, confiſcation and baniſhment. Theſe promiſe a greater terror to others, in favour of ſuch preſervation, at a time they

they expunge the malefactor's guilt, and work a degree of reparation, for the injury received; pardons would be unreaſonable, unleſs in ſpecial caſes, where they may be politically gracious, and pity and compaſſion, though they would ſtill flow from the tender and benevolent heart, over the miſadventure of a fellow creature, would never ſwell ſo highly, as to reprobate his puniſhment, when under death, it is inflicted upon him to a general good, without taking a link from the chain of juſtice, which, thus matured, ſhould never be broken.

This is what the author has attempted to ſhew. If he ſhould be expected by the reader to make the experiment, which is undoubtedly well worthy a trial, and to deviſe the particular mode of puniſhment, for crimes of human inſtitution, otherwiſe than he has generally done, he anſwers, "no verily,"—others have ſighed before him on the ſubject of this eſſay;—the late amiable and learned Sir William Blackſtone planned one bill to the end of national humanity, honor, and advantage,—the public begin to feel for the feelings and misfortunes of thoſe, who fall a prey to the laws; and as the author himſelf has followed their example,—HIS MISSION, IS AT AN END.

FINIS.

By the ſame AUTHOR.

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I. AN ESSAY on INTELLECTUAL LIBERTY.

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